



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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DATE: January 13, 2012

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FROM: Melanie A. Bachman, Staff Attorney *MAB*

RE: Regulations Revisions
Notice of Action on Proposed Regulations Pursuant to C.G.S. §4-168(d)

Pursuant to C.G.S. §4-168(d), the Connecticut Siting Council (Council) hereby provides notice that the Council has decided to take action on the proposed amended regulations related to the Council's Rules of Practice, Sections 16-50j-1 to 16-50z-4, inclusive, and Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies.

Pursuant to the Freedom of Information Act, C.G.S. §1-200, *et seq.*, the Council provides notice that revisions to the proposed amended regulations are available for inspection and copying.

Enclosed please find a Summary of the Proceeding and Written Comments that includes the final wording of the proposed regulations, a statement of the principal reasons in support of the Council's intended action and a statement of the principal considerations in opposition to the intended action as urged in written and oral comments on the proposed regulations and the reasons for accepting or rejecting such considerations.

Copies of the Summary and of the proposed regulations, as amended, are also posted on the Council's website under "CSC Regulations Revisions."

CSC REGULATIONS REVISIONS - Amendments to regulations relating to the Rules of Practice of the Council, Sections 16-50j-1 to 16-50z-4, inclusive, and Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies.

SUMMARY OF PROCEEDING AND WRITTEN COMMENTS

Section I provides the summary of this regulation-making proceeding. Section II provides a statement of the principal reasons in support of the Council's intended action to amend the regulations. Section III provides a statement of the principal considerations in opposition to the Council's intended action to amend the regulations as described in written comments on the proposed amended regulations and the Council's reasons for acceptance or rejection of such considerations.

I. SUMMARY OF THE REGULATION-MAKING PROCEEDING

During a regular meeting held on October 7, 2011, the Council voted to approve publication of notice in the Connecticut Law Journal of its intention to amend the Rules of Practice of the Council, Sections 16-50j-1 to 16-50z-4, inclusive, and Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies. A copy of the Council's notice of intent to amend the regulations was electronically mailed to the Council's regular meeting agenda service list on October 11, 2011. Also, a copy of the notice of intent to amend, proposed amended regulations, small business impact statement, agency fiscal estimates and Regulatory Flexibility Analysis were posted on the Council's website on October 11, 2011. On October 25, 2011, the notice of intent to amend regulations was published in the Connecticut Law Journal.

The Council received a total of four requests for a public hearing: the Berkshire-Litchfield Environmental Council (BLEC) submitted a request on October 13, 2011; the Housatonic Valley Association (HVA) submitted a request on October 13, 2011; the Town of Canaan Inland Wetlands and Conservation Commission (IW/CC) submitted a request on October 18, 2011 and NRG Energy, Inc. (NRG) submitted a request on November 8, 2011. The Council granted interested persons an opportunity to present oral argument pursuant to the Uniform Administrative Procedure Act (UAPA), C.G.S. §4-168(a)(7) and provided notice of the public hearing on November 10, 2011. The Council held the public hearing on December 13, 2011.

Prior to the public hearing, the Council received six written comments concerning the proposed amended regulations. The comments were submitted by: Attorney Keith Ainsworth; Covanta Energy Corporation; NRG; PCIA – the Wireless Infrastructure Association; the Connecticut Light and Power Company (CL&P); and the Easton Conservancy Trust. During the public hearing, the Council heard oral argument concerning the proposed amended regulations from seven interested persons. Oral argument was presented by: Karyl Lee Hall of the Branford Conservation Commission; June Lee of the Easton Conservancy Trust; Blake Levitt of the BLEC; Attorney David Monz representing NRG; John Morissette of CL&P; Senator Andrew Roraback; and Ellery Sinclair of the Town of Canaan IW/CC.

After the public hearing, the Council received three written comments concerning the proposed amended regulations. The comments were submitted by: CL&P; NRG; and United Illuminating Holdings Corporation (UIL).

Pursuant to C.G.S. §4-168(a)(8), the Council fully considered all oral and written submissions concerning the proposed amended regulations and made revisions to the proposed regulations to incorporate some of the suggestions made by the interested persons.

II. STATEMENT OF PRINCIPAL REASONS IN SUPPORT OF THE COUNCIL'S INTENT TO AMEND REGULATIONS

The principal reasons in support of the Council's intent to amend the Rules of Practice are to adopt, amend and rescind regulations to carry out the provisions of the Public Utility Environmental Standards Act (PUESA), C.G.S. §16-50g, et seq., and policies and practices of the Council in connection therewith; and to prescribe and establish reasonable regulations and standards as necessary and in the public interest with respect to filing fees, siting of facilities and environmental standards applicable to facilities. The Council's Rules of Practice have not been revised since 1989. The Council's regulations currently do not include a description of the organization pursuant to C.G.S. §4-167(a) and do not have the correct address for the office of the Council. Furthermore, changes in law and technology, including, but not limited to, federal law concerning deadlines for decisions on the siting of telecommunications infrastructure, state policy concerning the sharing of telecommunications towers and technological advancements concerning energy and telecommunications associated equipment necessitate amendments to the regulations.

III. STATEMENT OF PRINCIPAL CONSIDERATIONS IN OPPOSITION TO THE PROPOSED AMENDED REGULATIONS AS URGED IN WRITTEN COMMENTS AND THE COUNCIL'S REASONS FOR REJECTING SUCH CONSIDERATIONS

The principal considerations in opposition to the proposed amended regulations as urged in written comments and oral argument presented at the hearing, and the Council's reasons for rejecting such considerations are as follows:

1. Section 16-50j-2a. Definitions

CL&P recommends that the definition of "associated equipment" be revised to include "network equipment" to encompass upgrades to communications equipment at sites other than the project site.

Rather than specify an exhaustive list of installations that comprise "associated equipment" for both energy and telecommunications facilities, the Council utilized the phrase, "including, but not limited to..." which would clearly encompass the communications equipment CL&P references. Therefore, the Council rejects this recommendation.

2. Section 16-50j-15b. Limited Appearance

Attorney Ainsworth, the Town of Canaan IW/CC, Senator Roraback, the Town of Branford Conservation Commission, and the BLEC assert that under this section, parties and intervenors are not being given a true and fair opportunity to participate because they are prohibited from providing public comments.

However, Section 16-50j-15b has been worded in accordance with the UAPA and the PUESA, both of which make clear distinctions between party status, intervenor status and limited appearance status. Party or intervenor status allow for active participation in proceedings that may entail submitting pre-filed testimony, presenting witnesses, cross-examining the applicant, parties and intervenors and, most importantly, a right to appeal the final decision of the Council. Limited appearance status allows interested persons who choose not to become active participants through party or intervenor status in a proceeding to provide oral or written comments to the Council

before, during or after the public hearing held on a matter. Persons providing limited appearance statements may not submit pre-filed testimony, present witnesses, cross-examine the applicant, parties and intervenors, exercise appeal rights or be subject to cross-examination by the Council, applicant, parties or intervenors.

In response to opposing concerns, the Council deleted the following bracketed language and added the following underlined language to proposed Section 16-50j-15b:

Sec. 16-50j-15b. Limited Appearance.

(a) Status of Limited Appearance. Pursuant to Section 4-177c and Section 16-50n of the Connecticut General Statutes, prior to, during or within 30 days after the close of a hearing, at the Council's discretion, any person may make a limited appearance. All oral and written limited appearance statements shall become part of the record. No person making a limited appearance shall be a party or intervenor, or shall have the right to cross-examine witnesses, parties or intervenors. No party or intervenor shall have a right to cross-examine a person making a limited appearance. The Council may require a limited appearance statement to be given under oath. [Persons making limited appearance statements may not question the Council. No person who is a party or intervenor, including those who are members of non-profit organizations and those who are witnesses for a party or intervenor, may also make an oral limited appearance statement during the public comment session of the hearing or submit a written limited appearance statement to the Council.]

3. **Section 16-50j-21(a). Notice of Hearings**

CL&P requests that the Council revise this section to exempt transmission line facilities from the requirement of notice to abutting property owners for a petition for a declaratory ruling because the regulation is unduly burdensome. CL&P refers to C.G.S. §16-50l(b) for applications for transmission line facilities that require notice be provided to each electric company customer in the municipality where the facility is proposed to be located on a separate enclosure with each customer's monthly bill. Also, CL&P requests that the Council allow petitioners to send notice to abutting property owners on the date of filing the petition for declaratory ruling and to provide clarification that an affidavit is sufficient proof of notice.

Electric companies sometimes submit petitions for declaratory rulings with the Council for activities related to transmission line facilities such as re-conductoring. These activities may span several miles of transmission line. However, on some occasions in the past, the Council has received calls from electric company customers seeking information related to certain construction activities that were occurring in their neighborhoods. This required Council staff to describe the activities related to the declaratory ruling after it was approved by the Council. The notice requirements in this section are intended to ensure the affected residents are notified of potential construction activities prior to construction and to ensure the affected residents have an opportunity to comment prior to the Council's ruling on the petition. The Council prefers to have the petitioner submit a copy of the letter of notice that was sent to affected residents for the file describing the construction activities related to the petition rather than submit an affidavit. The alternative would be for the electric company to file an application for a certificate to conduct the construction activities that are the subject of the petition for declaratory ruling to accomplish the intent of public notice in this section. Therefore, the Council rejects the considerations in opposition to this proposed amended regulation.

CL&P also comments on the change in language as to when the Council provides notice of a hearing, particularly the statement, “not less than 30 days prior to a hearing date.” This language was added to ensure all parties and the public are afforded an opportunity for hearing after reasonable notice as specified under C.G.S. §4-177. It is well settled by the courts that 30 days constitutes reasonable notice. Therefore, the Council rejects the consideration in opposition to this proposed regulation.

4. **Section 16-50j-22a (c). Conduct of Proceedings**

Under subsection (c) entitled, “Discovery,” CL&P requests that the Council delete language that requires responses to interrogatories be separately and fully answered by the witness “that shall testify during the hearing as to the content of the response.”

The proposed section on “Conduct of Proceedings” was drafted with the intent to guide participants in the proceeding process. CL&P indicates that responses are authenticated by a member of the witness panel prior to admission as an exhibit at the hearing. However, in the existing regulations, this is not stated or apparent, particularly to a member of the public who does not regularly appear before the Council. The new subsection clearly describes the Council’s pre-hearing procedure and the requirements for the admission of evidence at the hearing. CL&P’s concern may be addressed at any hearing, as it regularly is addressed, by having a different witness available to adopt the pre-filed testimony and interrogatory responses of an absentee witness. Therefore, the Council rejects the considerations in opposition to this proposed regulation.

5. **Section 16-50j-22a (d). Protective Orders:** Attorney Ainsworth, BLEC and Senator Roraback assert that this section deprives the public of valuable information. They argue that “critical infrastructure” could encompass any utility structure.

However, the term “critical energy infrastructure” is clearly defined in the regulation in accordance with the Federal Energy Regulatory Commission’s (FERC) definition of “critical energy infrastructure.” In its comments on the amended regulation during the public hearing, CL&P reiterated this fact. Furthermore, “proprietary information” is clearly defined in the Freedom of Information Act (FOIA), C.G.S. §1-200 *et seq.* In December 2009, President Obama issued Proclamation 8460 pertaining to Critical Infrastructure Protection and defined “critical infrastructure” as “... assets, systems and networks, whether physical or virtual, so vital to the U.S. that their incapacitation or destruction would have a debilitating effect on security, national economic security, public health or safety.” Cellular phone towers and power grids are specifically identified as “critical infrastructure” in the Proclamation. Pursuant to C.G.S. §§16-50o and 16-50r, the Council shall not require the public disclosure of confidential, proprietary or trade secret information and shall allow such information to be submitted under a protective order during a hearing. The Council has established procedures for filing a motion to submit critical infrastructure information under protective order. Parties and intervenors to a proceeding may file an objection to a motion for a protective order and may access the information submitted under the protective order. Therefore, the Council rejects the considerations in opposition to this proposed regulation.

6. **Section 16-50j-44. Transferability of Certificates**

CL&P asserts that neither C.G.S. §16-50k(b) nor §16-50v authorize withholding approval of a transfer of certificate based on non-payment of annual assessments and invoices.

However, neither C.G.S. §16-50k(b) nor §16-50v prohibit withholding approval of a transfer of certificate based on non-payment of annual assessments and invoices. On several occasions in the past, the Council has encountered issues of non-payment related to transfer of certificate approvals where the transferor and transferee indicate that assessments and invoices prior to or after the date of transfer are the responsibility of the other party to the transfer. The result is that the invoices and assessments do not get paid and accrue considerable late fees, but still do not get paid. In July of 2010, the Council conditioned the transfer of six separate certificates upon the payment of assessments and invoices. The intent of this section is to put certificate holders and transferees on notice that a transfer of certificate will not be approved unless assessments and invoices are paid current. Also, the Council has added two standard conditions to all certificates that arrangements must be made among the transferor and transferee for the payment of invoices and assessments and that the certificate holder shall make timely payments in accordance with C.G.S. §16-50v. Therefore, the Council rejects the considerations in opposition to this proposed regulation.

7. Section 16-50j-57. Exemptions

Covanta Energy requests that facilities that have been approved by the Council be completely exempt from this section of the regulations and indicates that waste-to-energy facilities are different from conventional energy facilities. Furthermore, Covanta indicates that the proposed regulation for energy exempt modifications is duplicative of measures that are currently in place for waste-to-energy facilities.

However, under the PUESA, the Council has exclusive jurisdiction over any electric generating facility and its associated equipment. This jurisdiction applies to any modification of an existing facility, including waste to energy facilities. Therefore, the Council rejects this consideration in opposition to this proposed regulation.

Covanta Energy also requests that upgrades to air pollution control equipment and use of temporary energy components for outages be added to this section as energy exempt modifications under "routine maintenance," and that "routine maintenance" modifications be exempt from reporting requirements. Additionally, CL&P requests that certain equipment that may result in a "minimal increase in height," which they define as height increases of up to ten feet for transmission line equipment and up to six feet for substation equipment, should qualify as exempt modifications.

Rather than create an exhaustive list of modifications that would qualify as exempt modifications and add an exception to the criterion for no increase in height, the criteria to be met under the section determines whether the proposed modification is exempt. CL&P's suggestion as to what constitutes a "minimal increase in height" is subjective and site-specific. The burden is on the person requesting acknowledgement of the exemption that the proposed modification qualifies for the exemption. This section is structured in the same format as the existing telecommunications exempt modifications section of the regulations under Section 16-50j-72. Therefore, the Council rejects these considerations in opposition to this section of the amended regulations.

NRG requests that the Council revise this section to ensure that the Council, rather than its designee, evaluate whether the modification is exempt under this section, and that the request for exempt modification be placed on the Council's regular meeting agenda so interested parties can have an opportunity to comment on the proposed exempt modification. NRG is concerned that

modifications such as the installation or change-out of circuit breakers, disconnects or transformers may temporarily impact services to a generating station. CL&P and UIL disagree with NRG in that any operational or system-wide impact resulting from the installation or change-out of circuit breakers, disconnects or transformers is more properly within the realm of issues in the expertise and jurisdiction of ISO-New England. The Council's expertise and jurisdiction relates to the evaluation of potential adverse environmental effects of proposed energy component installations.

The Council has an established process for evaluating requests for exempt modifications. For telecommunications exempt modifications, the Council's designee creates a summary for each request received that is submitted to the Council for review. If Council members have questions or concerns, the request is placed on a regular meeting agenda for Council consideration. If Council members do not have questions or concerns, the Council's designee acknowledges the exempt modification in writing. The intent of this section is to provide a framework similar to the existing framework for telecommunications exempt modifications under Section 16-50j-72 for minor modifications to energy facilities that will not have a substantial adverse environmental effect and meet certain criteria for an exemption. Notice requirements for exempt modifications are established under Section 16-50j-58. At present, minor modifications, such as changing out a circuit breaker, are required to be filed as a petition for a declaratory ruling, which requires a field review, full staff report and review during a regular meeting, in addition to compliance with the provisions for petitions for declaratory ruling under the UAPA. This type of heightened scrutiny for such a minor modification is unnecessary, burdensome and expensive.

Rather than place requests for exempt modifications on the Council's regular meeting agenda, the Council proposes to post energy exempt modifications on its website to ensure that NRG and other interested parties have notice and an opportunity to comment.

- a. **Section 16-50j-57(c)(6):** CL&P requests that the reference to receipt of municipal zoning approvals and building permits be deleted because the Council has jurisdiction over energy components that are subject to PUESA.

However, subsection (c) of Section 16-50j-57 relates specifically to existing non-facility energy sites that are owned or operated by the state or a public service company. In order to reconcile CL&P's request with the non-facility component, the Council modified Section 16-50j-57(c)(6) by adding the following underlined language:

(6) Have received all municipal zoning approvals and building permits, where applicable.

As a result of this consideration, the Council also modified the telecommunications exempt modifications Section 16-50j-72(c)(5) with new language underlined as follows:

(5) Have received all municipal zoning approvals and building permits, where applicable.

- b. **Section 16-50j-57(b)(2)(F):** CL&P requests that this subparagraph be modified to address certain installations that would be exempt from certification of structural integrity by a Connecticut-licensed professional engineer under C.G.S. §20-309.

As a result, the Council modified Section 16-50j-57(b)(2)(F) by adding the following underlined language:

(F) impair the structural integrity of the facility, as determined in a certification provided by a professional engineer licensed in Connecticut, where applicable.

- c. **Sections 16-50j-57(d)(2)(D) and 16-50j-57(d)(3)(D)**: CL&P requests these subparagraphs requiring the notice regarding temporary facilities to state that the EMF fields will be managed in a manner consistent with the Council's EMF Best Management Practices based on the fact that future EMF levels cannot be measured.

As a result, the Council modified Sections 16-50j-57(d)(2)(D) and 16-50j-57(d)(3)(D) by deleting the bracketed language and adding the underlined language as follows:

(D) the electric and magnetic field levels at the site boundary of the temporary energy components and associated equipment [measured at the site boundary] will be managed in a manner that is consistent with the Council's Best Management Practices for Electric and Magnetic Fields.

8. **Section 16-50j-58. Notice of Intent to Install an Exempt Energy Component and Associated Equipment**

Covanta Energy requests that this section be deleted because it is "duplicative of current practice" since facilities obtain permits from local building authorities and notify abutters according to zoning statutes.

However, under the PUESA, the Council has exclusive jurisdiction over electric generating facilities. The intent of this section is to ensure affected municipalities and property owners are notified of a proposed exempt modification to a facility. Therefore, the Council rejects this consideration in opposition to this proposed regulation.

UIL requests that the Council consider adding a provision to the end of this section as follows: "The exemption request shall be automatically deemed acknowledged by the Council or its staff designee unless specifically rejected within thirty days of the Council's receipt of the request."

As described above, the Council has an established process for evaluating telecommunications exempt modifications that it intends to follow for consideration and approval of energy exempt modifications. If an exempt modification request is approved, the Council issues a decision letter that includes a one-year expiration date for the approval and that may include conditions of approval. Therefore, the Council rejects this recommendation.

NRG requests that this section be reconciled with the notice requirements in Section 16-50j-57, which allow for facility owners and operators to provide notice of installation of an emergency energy component after the installation is complete.

Therefore, the Council modified this section with new language underlined and deleted language bracketed as follows:

Sec. 16-50j-58. Notice of intent to install an exempt energy component and associated equipment. Except as otherwise provided under Sections 16-50j-57(a) and 16-50j-57(d), the owner or operator of any energy component and associated equipment claiming such component and associated equipment are exempt pursuant to Section 16-50j-57 of the Regulations of

Connecticut State Agencies shall give the Council, the property owner of record, if the property owner of record is different from the owner or operator of the energy component and associated equipment, and the chief elected official of the municipality [and any adjoining municipalities having a boundary not more than 2500 feet from] in which the energy component and associated equipment is to be located, notice in writing prior to construction of its intent to install such energy component and associated equipment, detailing its reasons for claiming exemption under Section 16-50j-57 of the Regulations of Connecticut State Agencies.

As a result of this consideration, the Council also modified the telecommunications exempt modifications Section 16-50j-73 with new language underlined and deleted language bracketed as follows:

Sec. 16-50j-73. Notice of intent to erect an exempt tower and associated equipment. Except as otherwise provided under Sections 16-50j-72(a) and Sections 16-50j-72(d), the owner or operator of any tower and associated equipment claiming such tower and associated equipment is exempt pursuant to section 16-50j-72 of the Regulations of Connecticut State Agencies shall give the council, property owner of record, if the property owner of record is different from the owner or operator of the tower and associated equipment, and the chief elected official of the municipality [and any adjoining municipalities having a boundary not more than 2500 feet from] in which the temporary facility is to be located, notice in writing prior to construction of its intent to construct such tower and associated equipment, detailing its reasons for claiming exemption under these regulations.

The Council acknowledges the inconsequential impact of energy and telecommunications exempt modifications, as these types of modifications typically involve equipment replacement and maintenance, and therefore deleted the requirements in the proposed regulations that municipalities within 2500 feet of the proposed installation be notified.

9. **Section 16-50j-59. Information Required:**

CL&P requests that the requirement for “a list of all energy facilities and associated equipment” under subsection (o) within a specified radius of the proposed facility may be of limited usefulness for energy sites and is more appropriate to telecommunications facilities.

However, cumulative impacts and proximity of energy facilities within a short distance of each other, such as the Kleen Energy facility and the NRG facility on River Road in Middletown, is a matter of public safety and energy security. The Council’s charge includes considerations of public safety and energy security. Therefore, the Council rejects this consideration in opposition to this proposed amended regulation.

CL&P further requests that reference to the Council’s Best Management Practices for EMF be added to Section 16-50j-59(r). In response, the Council modified Section 16-50j-59(r) by adding the underlined language as follows:

(r) A statement describing hazards to human health, if any, with such supporting data or references to authoritative sources of information as will be helpful to the understanding of all aspects of the issue, including electric and magnetic field levels at the property boundaries of the proposed site and compliance with the Council’s Best Management Practices for Electric and Magnetic Fields;

10. **Section 16-50j-61. Elements of a Development and Management Plan:**

- a. **Section 16-50j-61(b)(1):** CL&P requests that the Council require identification of property owners only for areas where the company does not own the land in fee or possess easement rights. The proposed regulation requires, "... identification of the edges of the proposed site and of any existing site contiguous to or crossing it, the portion of those sites owned by the company in fee and the identity of the property owner(s) of record of the portions of those sites not owned by the company in fee."

This regulation directly correlates to the requirement under Section 16-50j-59 for a map of the site that includes the names of abutting property owners and the portions of their lands abutting the site. The regulation requires identification of land owned by CL&P, as well as lands not owned by CL&P over which they may have easement rights, and lands not owned by CL&P over which they may not have easement rights. The intent of the regulation is to ensure the Council has an accurate abutters' map of the site once the final decision is rendered in the event that the dimensions of the site are modified during the hearing process. The map also assists staff in responding to questions from abutting property owners during the construction phase. Therefore, the Council rejects the considerations in opposition to this proposed amended regulation.

- b. **Section 16-50j-61(b)(7)(E):** CL&P requests that the Council clarify the type of disruption to residences and businesses within and adjoining the site that may be disrupted during the construction process. CL&P is concerned that "disrupted" could be interpreted broadly to include a general increase in construction truck traffic in the vicinity.

This is the intent of the regulation: a general increase in construction truck traffic in the vicinity constitutes a disruption. The Council often receives calls from concerned residents related to construction activities. The submission of information related to increased construction truck traffic and other potential disruptive activities would assist the Council staff in responding to concerns of residents. Therefore, the Council rejects the consideration in opposition to this proposed regulation.

- c. **Section 16-50j-61(b)(7)(F):** CL&P encourages the Council to clarify the phrase, "significantly large or old trees" by specifying a diameter at breast height and approximate age, as well as to exclude danger, decayed or diseased trees and tall-growing trees.

The intent of the regulation is to preserve trees with environmental significance, as well as trees that provide natural screening of a facility. For instance, in Docket 386, the Council specifically requested the applicant to work with the property owner to preserve an oak tree adjacent to the access road for a cell tower facility. This would obviously not include trees that pose a hazard to transmission lines. Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

- d. **Section 16-50j-61(c)(8):** CL&P suggests the Council delete the language that requires the certificate holder to provide the contact information for the contractor assigned to the project. Although the certificate holder is ultimately accountable for the project, staff may conduct periodic construction reviews at the facility site. For safety purposes and for questions, the staff should have information on the identity of the contractor working at the site and a contact person. Contrary to the statement of CL&P that there is no similar provision in the D&M plan regulation for telecommunications sites, there is an existing provision under

Section 16-50j-77(a). Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

- e. **Section 16-50j-61(e):** CL&P requests revision of this subsection to require that copies of a D&M plan be provided only to town officials who became parties in the proceeding, while other persons named on the Council's service list would receive simply a notice of the D&M plan filing with contact information for requesting a copy.

It is a standard practice for the Council to request an applicant or petitioner to submit a copy of a D&M plan to the service list for a proceeding. What CL&P suggests would be inequitable. All parties and intervenors on the service list, including the towns, are entitled to be provided a copy of the D&M plan and to provide comments thereon.

However, given the size of most D&M plans, the Council proposes that a notice of the filing of a D&M plan or any changes to a D&M plan with the Council be submitted to the service list. As a result of this consideration, the Council modified this subsection and corrected the order by properly designating it subsection (d) with new language underlined as follows:

(d) Notice. A copy, or notice of the filing, of the D&M plan, or any section thereof, or a copy, or notice of the filing of any changes to the D&M plan, or any section thereof, shall be provided to the service list and property owner of record, if applicable, at the same time the plan, or any section thereof, or at the same time any changes to the D&M plan, or any section thereof, is submitted to the Council.

As a result of this consideration, the Council also modified the telecommunications Development and Management Plan Section 16-50j-75 with new language underlined as follows:

(e) Notice. A copy, or notice of the filing, of the D&M plan, or any section thereof, or a copy, or notice of the filing of any changes to the D&M plan, or any section thereof, shall be provided to the service list and the property owner of record, if applicable, at the same time the plan, or any section thereof, or at the same time any changes to the D&M plan, or any section thereof, is submitted to the Council.

CL&P also requests that this subsection be revised to delete the requirement that copies of the D&M plan to be submitted to the property owner of record, if applicable. CL&P suggests that the section be changed to require copies of the D&M plan to be provided to property owners only for areas where the company does not own the land in fee or possess easement rights. Presumably, the concern is for transmission line facilities rather than substations and generating facilities.

However, the intent of this section, particularly the addition of "if applicable" was to ensure that the owner of a leased property be provided with a copy of the D&M plan in the event a certificate holder does not own but leases the property. Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

- f. **Section 16-50j-61(f):** CL&P requests revision of this subsection to require any proposed change to a D&M plan be sent only to town officials who became parties in the proceeding

while other persons named on the Council's service list would receive simply a notice of the D&M plan filing with contact information for requesting a copy.

This subsection relates specifically to changes to the D&M plan proposed by the Council. The changes to subsection (d) above directly respond to CL&P's concern. Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

11. Section 16-50j-61 and 16-50j-76. Elements of a Development and Management Plan:

Attorney Ainsworth, the Town of Canaan IW/CC, Senator Roraback and the BLEC assert that the reference to the Department of Energy and Environmental Protection (DEEP) Natural Diversity Database (NDDDB) should not be codified in the regulation because the NDDDB is inadequate and incomplete for determining the presence of endangered, threatened and special concern species and critical habitats at a particular site location.

In response to these concerns, the Council modified proposed amended Sections 16-50j-61(b)(7)(C) and 16-50j-76(b)(7)(C) by deleting the following bracketed language:

(C) Any known critical habitats [identified by a Department of Energy and Environmental Protection (DEEP) Natural Diversity Database (NDDDB) Review] or areas identified as having rare, endangered, threatened, or special concern plant or animal species listed by federal and state governmental agencies;

Also in response to these concerns, the Council modified proposed amended Sections 16-50j-61(c)(2)(C) and 16-50j-76(c)(3)(C) by deleting the following bracketed language and adding the following underlined language:

(C) Precautions and all reasonable mitigation measures to be taken in areas within or adjoining the site to minimize any adverse modifications or impacts of such actions on endangered, threatened or special concern plant or animal species listed by federal and state governmental agencies and critical habitats [as identified by a Department of Energy and Environmental Protection (DEEP) Natural Diversity Database (NDDDB) Review] that are in compliance with federal and state recommended standards and guidelines, as amended;

12. Section 16-50j-62. Reporting Requirements:

CL&P suggests the Council add a materiality standard to what constitutes "significant changes" to a D&M plan and indicates that changes to structure locations and increased or decreased mitigation measures would create an obligation that is unduly burdensome and may require CL&P to hire a field monitor to verify structure locations and mitigation measures.

It is standard practice for the Council to require the certificate holder to hire an independent third party environmental inspector to ensure best practices are followed with respect to erosion and sedimentation controls in environmentally sensitive areas, including mitigation. Furthermore, the locations of structures are required to be clearly identified as part of the D&M plan. Considering the location of structures may have an impact on environmental resources, including, but not limited to, wetlands and visibility, a change in the location of a structure is clearly a "significant change" to an approved D&M plan that warrants Council consideration and review. The intent of the regulation is to ensure the Council has notice of any significant change to the D&M plan that

was approved by the Council. The materiality standard CL&P suggests for a “significant change” is a phrase such as “significantly reduces the amount of protection to the environment” or “significantly increases potential public concerns.” Such a materiality standard is ambiguous and subjective. The Council shall make the determination as to whether a change in the D&M plan will reduce the amount of protection to the environment or will increase potential public concerns, and the parties and intervenors to a proceeding should have an opportunity to comment. Therefore, the Council rejects this consideration in opposition to the proposed amended regulation.

13. Section 16-50j-88. Tower Sharing:

Attorney Ainsworth and the Town of Canaan IW/CC assert that this section exempts antenna collocations on existing telecommunications towers from public scrutiny and that collocation on an existing telecommunications tower is not in all instances the best solution for minimizing impact.

However, C.G.S. §16-50aa, entitled “Tower Sharing,” contains the state policy that tower sharing, when technically, legally, environmentally and economically feasible, and when such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest. Furthermore, the statute states, “if the Council finds that the proposed shared use of the facility is technically, legally, environmentally and economically feasible, the Council **shall** issue an order approving such shared use” (emphasis added). Once the Council receives a request for tower sharing, the Council sends notice to the Chief Elected Official of the municipality where the existing tower is located and requests that comments from the municipality and/or concerned residents be submitted to the Council by a certain date prior to the date of the regular meeting at which the request shall be taken up as an agenda item by the Council. Any comments received from the municipality and/or concerned residents are taken into consideration during the regular meeting. In addition to the state policy on tower sharing, the Federal Communications Commission (FCC) issued a declaratory ruling in October 2009 that all tower sharing requests be considered and decided by a state or local siting agency within 90 days of the date of receipt of the request. Any extension of this federal deadline must be consented to by the person requesting the tower share and be submitted to the Council in writing. If any comments are received from the municipality and/or concerned residents that the Council decides to address, the Council may request an extension of time from the person requesting the tower share. Therefore, the Council rejects the considerations in opposition to the proposed regulation.

14. Section 16-50v-3. Non-payment:

CL&P asserts that C.G.S. §16-50v only provides for a monetary penalty for non-payment. C.G.S. §16-50v states, “the Council shall charge late fees or penalties at the rate of one and one-half percent per month against invoiced amounts not received by the Council within thirty days after the due date shown on the Council’s invoice.”

Similar to the rationale related to CL&P’s argument pertaining to Section 16-50j-44 for transferability of certificates, there is no provision under C.G.S. §16-50v that prohibits the Council from refraining from considering pending or future matters based on non-payment of annual assessments and invoices. In December 2003, two telecommunications service providers had not paid annual assessments and invoices totaling in excess of \$200,000. The Chairman wrote letters to the service providers indicating that failure to make payment for past due items by a date certain would result in the cessation of current applications pending before the Council. In

July 2010, another telecommunications service provider had not paid invoices totaling in excess of \$55,000. The Chairman wrote a letter to the service provider indicating that should the sum remain unpaid by a date certain, the Council shall refrain from considering any and all pending and future matters sought by the service provider. Ultimately, the Council denied a certificate for a pending project proposed by the service provider on the basis of non-payment supported by records of the Council kept in the ordinary course of business that the sum remained unpaid, as well as the service provider's failure to grant an extension of the deadline for a decision on the certificate application. The intent of this section is to put applicants and petitioners on notice that a pending application or petition will not be approved unless assessments and invoices are paid current. Also, the Council added a standard condition to all certificates that the certificate holder shall make timely payments in accordance with C.G.S. §16-50v. Therefore, the Council rejects the considerations in opposition to this proposed amended regulation.

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Section 1. The Regulations of Connecticut State Agencies are amended by adding Section 16-50j-1 as follows:

(NEW) Sec. 16-50j-1. Description of Organization.

(a) General Course of Operations.

The Connecticut Siting Council (Council), formerly known as the Power Facility Evaluation Council, was established in the executive branch of the state government by Public Act 575 of the 1971 General Assembly. The Public Utilities Environmental Standards Act (PUESA), Title 16, Chapter 277A, governs the operation of the Council.

The Council is charged with:

- (1) balancing the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values;
- (2) providing environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state;
- (3) encouraging research to develop new and improved methods of generating, storing, and transmitting electricity and fuel and of transmitting and receiving television and telecommunications signals with minimal damage to the environment;
- (4) promoting energy security;
- (5) promoting the sharing of towers for fair consideration wherever technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state;
- (6) requiring annual forecasts of the demand for electric power, together with identification and advance planning of the facilities needed to supply that demand; and
- (7) facilitating local, regional, state-wide and interstate planning.

(b) Public Participation.

The public may participate in the Council process in one of two ways: through party or intervenor status, or through a limited appearance by submission of oral or written comments to the Council. Information describing the types of participation is discussed in depth on the Council website, available at www.ct.gov/csc. The Council's website provides information regarding pending and past proceedings, forms and instructions, and statements of policy. The public is welcome to contact Council staff and make requests for information during normal business hours from 8:30 AM to 4:30 PM each weekday except Saturdays, Sundays and holidays, either in person at the Council office located at 10 Franklin Square, New Britain, CT 06051, by phone at (860) 827-2935, by fax at (860) 827-2950 or by e-mail at siting.council@ct.gov.

Statement of Purpose: The new proposed regulation is intended to provide an organizational description that represents a concise statement of the Council's general course of operations and how the public may acquire information regarding the Council's jurisdictional authority and participate in the Council process, pursuant to Conn. Gen. Stat. §4-167(a)(1), which states, "In addition to other regulation-making requirements imposed by law, each agency shall: (1) Adopt as a regulation a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests..."

The main provisions of the new regulation describe the Council's general course of operations and how the public may acquire information about the process and participate in the process.

The proposed new regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §4-167(a)(1)

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 2. Section 16-50j-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-1a. Procedure governed. These rules govern practice and procedure before the Connecticut Siting Council [of the state of Connecticut] under the applicable laws of the state of Connecticut and except where by statute otherwise provided. Additional regulations pertaining to hazardous waste proceedings [appear in Secs. 22a-116-B-1—22a-116-B11 and section 22a-122-1 of the Connecticut Regulations of State Agencies. Additional regulations] and pertaining to low-level radioactive waste management proceedings appear in [Secs. 22a-163f-a—22a-163t(3)-3 of the Connecticut Regulations.] Section 22a of the Regulations of Connecticut State Agencies.

Statement of Purpose: The proposed amended regulation is re-numbered to accommodate the new organizational description and changes specific references to hazardous waste proceedings regulations and low-level radioactive waste management proceedings to more general references to Section 22a of the Regulations of Connecticut State Agencies because changes have been made and may be made in the future that would affect the accuracy of these citations.

The main provisions of the amended regulation more generally refer to Section 22a of the Regulations of Connecticut State Agencies rather than specific sections because changes may be made in the future that would affect the accuracy of these citations.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 3. Section 16-50j-2a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-2a. Definitions. As used in these rules, except as otherwise required by the context:

[(a)] **(1)** “Associated equipment” [means] includes, but is not limited to:

- (A) any building, structure, fuel tank, backup generator, antenna, satellite dish, or technological equipment, including equipment intended for sending or receiving radio frequency signals [to or from satellites,] that is [an integral part to] a necessary component for the operation of a community antenna television tower or telecommunications tower; or
- (B) any building, structure, fuel tank, backup generator, transformer, circuit breaker, disconnect switch, control house, cooling tower, pole, line, cable, conductor or emissions equipment that is a necessary component for the operation of an electric transmission line facility, fuel transmission facility, electric generating or storage facility, or electric substation or switchyard.

[(b)] **(2)** “Attorney” means an attorney at law, duly admitted to practice before the Superior Court of the state of Connecticut. Any other person who appears before the Council in any contested case or petition for a declaratory ruling shall be deemed to appear as the agent or representative of a person, firm, corporation, or association upon filing with the Council a written notification of appearance and the written authorization of the person, firm, corporation, or association being represented.

[(c)] **(3)** “Certificate” means a Certificate of Environmental Compatibility and Public Need as defined under Section 16-50k of the Connecticut General Statutes or a Certificate of Public Safety and Necessity [as those terms are used in sections 16-50k, 22a-117 and 22a-163g of the General Statutes] as defined under Section 22a-117 of the Connecticut General Statutes to be issued, denied, conditioned, limited, modified, or amended, in accordance with the disposition of applications authorized by law to be submitted to the Council.

[(d)] **(4)** “Chairperson” means the public member of the Council appointed pursuant to the provisions of Section 16-50j(d) of the Connecticut General Statutes [of Connecticut].

(NEW) (5) “Collocation” means the mounting or installation of antennas and associated equipment on an existing tower or other structure for the purpose of transmitting or receiving radio frequency signals for communications purposes that is unlikely to have a significant adverse environmental effect and does not increase the tower height.

(NEW) (6) “Component” means a part of a mechanical or electrical system.

[(e)] **(7)** “Contested case” means a proceeding in the Council’s disposition of matters delegated to its jurisdiction by law in which the legal rights, duties, or privileges of a

party are determined by the Council after an opportunity for hearing in accordance with Section 4-166(2) of the Connecticut General Statutes [of Connecticut].

[(f)] **(8)** "Council" means the members of the Connecticut Siting Council appointed under section 16-50j(b) and section 16-50j(c) of the [General Statutes of] Connecticut General Statutes and referred to in Section 16-50j(d) and section 22a-115 [and sections 22a-163—22a-163w,] of the Connecticut General Statutes.

[g] **(9)** "Facility" means

[(1)] an electric transmission line of a design capacity of 69 kilovolts or more, including associated equipment;

(2) a fuel transmission facility except a gas transmission line having a design capacity of less than 200 pounds per square inch gauge pressure;

(3) any electric generating or storage facility using any fuel, including nuclear materials, including associated equipment for furnishing electricity but not including a facility;

(A) owned and operated by a private power producer, as defined in section 16-243b of the General Statutes,

(B) which is a qualifying small power production facility or a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978, as amended, or a facility determined by the council to be primarily for a producer's own use, and

(C) which has, in the case of a facility utilizing renewable energy sources, a generating capacity of one megawatt of electricity or less and, in the case of a facility utilizing cogeneration technology, a generating capacity of 25 megawatts of electricity or less;

(4) any electric substation or switchyard designed to change or regulate the voltage of electricity at 69 kilovolts or more or to connect two or more electric circuits at such voltage, which substation or switchyard may have a substantial adverse environmental effect, as determined by the council, and other facilities which may have a substantial adverse environmental effect;

(5) community antenna television towers and head-end structures, including satellite dishes and other associated equipment, which may have a substantial adverse environmental effect; and

(6) telecommunications towers owned or operated by the state or a public service company as defined in section 16-1 of the General Statutes, or used for public cellular radio communications service as defined in section 16- 50i of the General Statutes, which may have a substantial adverse environmental effect.]

a facility as defined in Section 16-50i(a) of the Connecticut General Statutes.

(NEW) (10) "Fuel" means a fuel as defined in Section 16a-17 of the Connecticut General Statutes.

[(h)] **(11)** "Hazardous waste facility" means land and appurtenances thereon or structures used for the disposal, treatment, management, storage or recovery of hazardous waste as these terms are defined in section 22a-115 of the Connecticut General Statutes.

[(i)] **(12)** "Hearing" means a proceeding whereby witnesses may be examined, and oral or documentary evidence may be received.

[(j)] **(13)** “Intervenor” means a person other than a party, granted status as an intervenor by the Council in accordance with [Section 16-50j-15a of the Regulations of State Agencies] Section 16-50n of the Connecticut General Statutes.

[(k)] **(14)** “Limited appearance” means the type of participation in a contested case, and the rights prescribed therefor in accordance with the provisions of sections 22a-120(b) and 16-50n(f) [and section 22a-16j] of the Connecticut General Statutes [of Connecticut].

[(l)] **(15)** “Modification” means a significant change or alteration in the general physical characteristics of a facility, including, but not limited to, design, capacity, process or operation that the Council deems significant, except where a modification involves a temporary facility as [approved] determined by the council.

[(1)] **(A)** As defined pertaining to a hazardous waste facility “modification” means:

[(A)] **(1)** any change or alteration in the design, capacity, process or operation of an existing hazardous waste facility requiring a new permit from the Commissioner of the Department of Energy and Environmental Protection pursuant to chapter 445, 446d, or 446k of the Connecticut General Statutes, that the Council deems significant, or

[(B)] **(2)** any change or alteration in the approved design, capacity, process or operation of a hazardous waste facility constructed or operating pursuant to chapter 445 of the Connecticut General Statutes that the Council deems significant. Such change or alteration may include, but is not limited to, a change or alteration in the volume or composition of hazardous waste managed at such facility. The routine maintenance, repair, or replacement of the individual components at a hazardous waste facility that is necessary for normal operation or a change or alteration at a hazardous waste facility ordered by a state official in the exercise of his statutory authority shall not be deemed to be a modification.

[(2)] **(B)** As defined pertaining to a low-level radioactive waste management facility, “modification” means any change or alteration in the approved design, capacity, process or operation of a low-level radioactive management facility constructed or operating pursuant to [Secs. 22a-163—22a-163w, inclusive, of the General Statutes] the provisions of the Northeast Interstate Low-Level Radioactive Waste Compact, Sections 22a-161, et seq. of the Connecticut General Statutes. [, that the Council deems significant. Such change or alteration may include but is not limited to a change or alteration in the volume or composition of low-level radioactive waste managed at such facility. The routine maintenance, repair or replacement of the individual components at a low-level radioactive waste management facility that is necessary for normal operation or a change or alteration at a low-level radioactive waste management facility ordered by a federal or state official in the exercise of his statutory authority shall not be deemed to be a modification.]

[(m)] **(16)** “Municipality” means a city, town or borough of the state, and “municipal” has a correlative meaning.

[(n)] **(17)** "Party" means each person entitled to be a party in a contested case pursuant to the provisions of section 16-50n(a) of the Connecticut General Statutes [of Connecticut], or in the event of a hazardous waste facility proceeding, pursuant to the provisions of section 22a-120(a) of the Connecticut General Statutes. [of Connecticut. or, in the event of a low-level radioactive waste management facility proceeding, pursuant to the provisions of section 22a-163j of the General Statutes.]

[(o)] **(18)** "Person" means any [individual [sic] corporation, joint venture, public benefit corporation, political subdivision, governmental agency or authority, municipality, partnership, association, trust or estate, and any other entity, public or private, however organized. As defined in the event of a hazardous waste or low-level radioactive waste management facility proceeding, "person" means any individual, corporation, joint venture, public benefit corporation, the state and its agencies and political subdivisions, the federal government and its agencies, municipality, partnership, association, trust or estate, and any other entity, public or private, however organized.] person as defined in Sections 16-50i and 22a-115 of the Connecticut General Statutes.

(NEW) (19) "Presiding Officer" means the Chairperson of the Connecticut Siting Council, or the Chairperson's designee.

[(p)] **(20)** "Regional Low-Level Radioactive Waste Management Facility" or "Low-Level Radioactive Waste Management Facility" means a facility to be located in Connecticut, including the land, buildings, equipment, and improvements authorized by the Northeast Interstate Low-level Radioactive Waste Commission to be used or developed for the receipt, treatment, storage, management or disposal of the low-level radioactive wastes generated within the party states to the Northeast Interstate Low-level Radioactive Waste Compact as these terms are defined in section [22a-163a] 22a-161 of the Connecticut General Statutes.

(NEW) (21) "Renewable Energy Sources" include, but are not limited to, solar photovoltaic, solar thermal, wind, ocean thermal, wave or tidal, geothermal, landfill gas, hydropower or biomass.

[(t)] **(22)** "[Tower] Site" means a contiguous parcel of property with specified boundaries, including, but not limited to, the leased area, right-of-way, access and easements on which [one or more CATV or telecommunications towers as defined in section 16-50j-2a of these regulations and associated equipment, if any, are or will be located] a facility and associated equipment is located, shall be located, or is proposed to be located.

[(q)] **(23)** "Tower" means a structure, whether free standing or attached to a building or another structure, that has a height greater than its diameter and that is high relative to its surroundings, or that is used to support antennas for sending or receiving radio frequency signals, or for sending or receiving signals to or from satellites, or any of these, which is or is to be:

[(1)] **(A)** used principally to support one or more antennas for receiving or sending radio frequency signals, or for sending or receiving signals to or from satellites, or any of these, and

[(2)] **(B)** owned or operated by the state [or], a public service company as defined in Section 16-1 of the Connecticut General Statutes, [or used for public cellular radio communications service as defined in section 16-50i of the General Statutes of Connecticut] or a certified telecommunications provider, or used in a cellular system, as defined in Section 16-50i(a) of the Connecticut General Statutes.

[(r)] **(24)** “Tower Base” means the top of the foundation or equivalent surface [which will] that shall bear the vertical load of a tower.

[(s)] **(25)** “Tower Height” means the measurement from [the base of the tower] ground level to the highest point on the tower;

(NEW) (26) “Tower Share” means collocation on a facility in accordance with Section 16-50aa of the Connecticut General Statutes.

Statement of Purpose: The proposed amended regulation seeks to provide clear and concise definitions of terms that are consistent with relevant sections of the Connecticut General Statutes. For example, Conn. Gen. Stat. §16-50aa entitled, “Tower Sharing,” contains the General Assembly’s finding that tower sharing, when technically, legally, environmentally and economically feasible, and when such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest. The current regulations make no reference to “tower sharing” or “collocation.” The proposed amended regulation adds new definitions of terms in accordance with technological advancement. For example, Conn. Gen. Stat. §16-50i(a)(7) contains the phrase “any component of a proposal submitted pursuant to the request for proposal process” without defining “component.” The proposed amended regulation deletes definitions of terms in accordance with statutory changes. For example, the reference to “modification” of a low level radioactive waste facility is changed to refer to the Northeast Interstate Low Level Radioactive Waste Compact because the statutes referred to in this section were repealed October 1, 2006. The proposed amended regulation also adopts subdivision numerical designators in lieu of the current alphabetical designators.

The main provisions of the amended regulation make changes to the definitions that are intended to clarify terms related to specific types of jurisdictional facilities.

The proposed amended regulation impacts existing regulations by removing references to sections 22a-163—22a-163w of the Connecticut General Statutes, which were repealed October 1, 2006 and by deleting erroneous references to section 22a-16j, which does not exist. Amendments to definitions specifically refer to statutory definitions, industry standards and technology related to energy and telecommunications infrastructure.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 4. Section 16-50j-5 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-5. Computation of time. Computation of any period of time referred to in these rules begins with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Council is closed, in which event the period shall run until the end of the next following business day. When such period of time, with intervening Saturdays, Sundays and legal holidays counted, is five days or less, said Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise such days shall be included in the computation. The Council shall follow the state holiday calendar for such computations of time.

Statement of Purpose: The proposed amended regulation adopts the state holiday calendar to clarify the definition of “legal holidays.”

The main provisions of the amended regulation address that, in computations of time for filing documents, requests to operate on a holiday, and conditions in decisions and orders, questions have arisen as to what the Council defines as a “holiday.”

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 5. Section 16-50j-8 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-8. Office. The principal office of the council is [136 Main Street, Suite 401] located at 10 Franklin Square, New Britain, Connecticut 06051. The office of the Council is open from 8:30 a.m. to 4:30 p.m. each weekday except Saturdays, Sundays, and legal holidays.

Statement of Purpose: The proposed amended regulation changes the address of the office of the Council.

The main provisions of the amended regulation indicate that the Council’s office moved from 136 Main Street, Suite 401 to 10 Franklin Square, New Britain, CT.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 6. Section 16-50j-10 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-10. Identification of Communications. Communications should embrace only one matter, and should contain the name and address of the communicator and the appropriate [certificate] proceeding reference, if any there be, pertaining to the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding and the docket or petition number should be given.

Statement of Purpose: The proposed amended regulation more generally refers to “proceedings” as opposed to specifically “certificate” to encompass communications submitted to the Council that are not related to a “certificate” and adds a reference to “petition” number. These changes assist proceeding participants in submitting filings that contain specific identifying information for the subject matter.

The main provisions of the amended regulation specify that the Council has proceedings for certificates and petitions for declaratory rulings. Each matter is assigned a docket or petition number when it is submitted to the Council.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 7. Subsections (a) to (f), inclusive, of Section 16-50j-12 of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 16-50j-12. Filing requirements. (a) Copies. Except as may be otherwise required by these rules or by any other rules or regulations of the Council or ordered or expressly requested by the Council, at the time motions, petitions, applications, documents, or other papers are filed with the Council, there shall be furnished to the Council an original of such papers. In addition to the original, there shall also be filed 20 copies for the use of the Council and its staff, unless a greater or lesser number of such copies is expressly requested by the Council. An electronic version of the document may also be filed by e-mail if the applicant or petitioner is reasonably able to do so. Electronic filing at Siting.Council@ct.gov is strongly encouraged.

(b) Form. Except for such forms as may from time to time be provided by the council and used where appropriate, motions, petitions, applications, documents, or other papers filed for the purpose of any proceeding before the council shall be printed or typewritten on paper cut or folded to letter size, 8 to 8½ wide. Width of margins shall be not less than one inch. [The impression shall be on only one side of the papers, unless printed, and shall be double spaced, except that quotations in excess of five typewritten lines shall be single spaced and indented. Mimeographed, multigraphed, photoduplicated, or the like copies will be accepted as typewritten, provided all copies are] The printed materials may

be submitted double-sided and 1.5-line spaced. Maps, charts and other pictorial exhibits shall be submitted on only one side of the paper. All copies shall be clear and permanently legible. All such filings shall be sequentially paginated.

(c) Filing. All motions, petitions, applications, documents or other papers relating to matters requiring action by the Council shall be filed at the office of the Council [136 Main Street, Suite 401], 10 Franklin Square, New Britain, Connecticut 06051.

(NEW) (d) State Agency Notification. Pursuant to Section 8 of Public Act 07-242, each application shall be accompanied by proof of service of a copy of the application on the Department of Emergency Management and Homeland Security, or its successor agency, and any other state or municipal body as the Council may require, in addition to proof of service of a copy of the application on the enumerated departments under Section 16-50j(b)(6) of the Connecticut General Statutes. The Council shall consult with and solicit comments from the Department of Emergency Management and Homeland Security, or its successor agency, and any other state agency as the Council may require, in the same manner as the Council consults with and solicits comments from the enumerated departments under Section 16-50j(h) of the Connecticut General Statutes. The Council shall request state agency comments at the time a hearing notice is published and at the conclusion of a public hearing.

(NEW) (e) Service List. The Council shall prepare and make available a service list for each proceeding. Persons on the service list shall elect to receive documents by e-mail or by U.S. Mail. Each service list shall:

- (1) contain the name of each party, intervenor and participant in the proceeding and the date upon which status was granted;
- (2) contain the names and addresses of the representatives of each party, intervenor and participant in the proceeding, if applicable;
- (3) indicate whether each party, intervenor and participant has elected to be served by e-mail; and
- (4) provide the e-mail address of every person in the proceeding who has elected to be served by e-mail.

(NEW) (f) Service requirements.

(1) Every person shall serve a copy of a filed document to every person on the service list of the proceeding in which the document is to be filed. This subsection shall not apply to the filing of proprietary or critical energy infrastructure information for which a protective order may be sought.

(2) Each document presented for filing shall contain the following certification:

“I hereby certify that a copy of the foregoing document(s) was/were (method of service) to the following service list on (date).” Signature and printed name.

Statement of Purpose: The proposed amended regulation adopts a process for proceeding participants to file documents electronically; deletes requirements that written submissions be on one side of the paper and double-spaced and references to obsolete copy technology; and adds a requirement that a copy of an application be provided to the

Department of Emergency Management and Homeland Security, or its successor agency, pursuant to Public Act 07-242. P.A. 07-242 requires investigation into energy security with regard to the siting of facilities and to facilitate the legislative finding and purpose under Conn. Gen. Stat. § 16-50g to promote energy security by consultation with the Department of Emergency Management and Homeland Security, or its successor agency. In December 2009, President Obama issued Proclamation 8460 pertaining to Critical Infrastructure Protection and defined “critical infrastructure” as “... assets, systems and networks, whether physical or virtual, so vital to the U.S. that their incapacitation or destruction would have a debilitating effect on security, national economic security, public health or safety.” Cellular phone towers and power grids are specifically identified as “critical infrastructure” in the Proclamation. The proposed amended regulation informs applicants, parties, intervenors and the public as to the service requirements for submitted documents on the formal service list of participants in a particular proceeding. Copies of all documents, including but not limited to motions, objections and correspondence, are required to be submitted to all participants in a proceeding pursuant to Section 4-177c of the Uniform Administrative Procedure Act. The Council posts all filings on its website for the convenience of the public.

The main provisions of the amended regulation inform proceeding participants of the formal service list of a particular matter and permit filings to be filed electronically, double-sided and 1.5-line spaced, except for pictorial exhibits, to reduce paper waste. Electronic document filing would be more efficient for the proceeding participant, the Council and the public. The documents could be immediately uploaded to the Council’s website. The changes also incorporate the requirements of P.A. 07-242 for consultation with the Department of Emergency Management and Homeland Security, or its successor agency.

The proposed amended regulation complies with the requirements of P.A. 07-242.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 8. Section 16-50j-13 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-13. Designation of parties. In issuing the notice of hearing, the Council [will] shall name as parties those persons enumerated in and qualifying under section 16-50n(a), subsections (1) to (3), inclusive, of the Connecticut General Statutes [of Connecticut]. In the event of a hazardous waste facility proceeding, the Council [will] shall name as parties those persons enumerated in and qualifying under section 22a-120(a) of the [General Statutes of] Connecticut General Statutes. [In the event of low-level radioactive waste management facility proceedings, the Council will name as parties those persons enumerated in and qualifying under section 22a-163j of the General Statutes.] Any person named as a party may decline or withdraw such status upon notifying the Council in writing of their intent not to participate as a party.

Statement of Purpose: The proposed amended regulation removes the reference to section 22a-163j, which was repealed October 1, 2006 and makes changes consistent with the Legislative Commissioner's Office (LCO) Manual for Drafting Regulations. It also adds written notice requirements for parties participating in a proceeding.

The main provisions of the amended regulation correct an erroneous statutory reference and add written notice requirements of a named party's intent not to participate or to withdraw from participation.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 9. Subsections (a) to (c), inclusive, of Section 16-50j-14 of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 16-50j-14. Application to be designated a party. (a) Filing of petition. Any [other] person who proposes to be named or admitted as a party to any proceeding, pursuant to Section 4-177a of the Connecticut General Statutes may file a written petition to be so designated [before the date of the hearing of the proceeding as a contested case, at the hearing, or before a ruling is made on a petition for a declaratory ruling.] at least five days before the hearing. The five day filing requirement may be waived upon a showing of good cause.

(b) Contents of petition. The petition shall state the name and address of the petitioner. It shall [describe the manner in which the petitioner claims to be substantially and specifically affected by] state facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by the Council's decision in the proceeding pursuant to Section 4-177a of the Connecticut General Statutes. It shall state the contention of the petitioner concerning the issue of the proceeding, the relief sought by the petitioner, and the statutory or other authority therefor, and the nature of the evidence, if any, that the petitioner intends to present in the event that the petition is granted.

(c) Designation as party. The council shall consider all such petitions and [will] shall name or admit as a party any person who is required by law to be a party and any other person whose legal rights, duties, or privileges [will] shall be [determined] specifically affected by the council's [proceeding, if the council finds such person is entitled as of right to be a party to said proceeding, or that the participation of such person as a party is necessary to the proper disposition of said proceeding.] decision in the proceeding. Any person named or admitted as a party may decline or withdraw such status at any time upon notifying the Council in writing of their intent not to participate as a party.

Statement of Purpose: The proposed amended regulation intends to ensure the regulations accurately reflect statutory requirements for persons to be named as parties to

an administrative proceeding in accordance with section 4-177a of the Uniform Administrative Procedure Act and section 16-50n of the Public Utility Environmental Standards Act. It also adds written notice requirements for parties participating in a proceeding.

The main provisions of the amended regulation ensure that the regulations are consistent with statutory sections for party status in an administrative proceeding.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 10. Section 16-50j-15 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-15. [Limited appearance. At any time during a proceeding, at the Council's discretion, any person may make a limited appearance which shall entitle said person to file a statement in writing or make an oral statement, under oath or affirmation, at the hearing.] **Application to be designated an intervenor.**

- (a) **Filing of petition.** Any person who proposes to be named or admitted as an intervenor in any proceeding pursuant to Section 4-177a of the Connecticut General Statutes may file a written petition to be so designated at least five days before the date of the hearing. The five day filing requirement may be waived upon a showing of good cause.
- (b) **Contents of petition.** The petition shall state the name and address of the petitioner. It shall state facts that demonstrate the petitioner's participation shall furnish assistance to the Council in resolving the issues in the proceeding, is in the interests of justice and will not impair the orderly conduct of the proceedings pursuant to Section 4-177a of the Connecticut General Statutes. The petition shall provide a summary of the petitioner's contentions concerning the issues in the proceeding; the relief sought by the petitioner in the proceeding and the legal authority therefor; and the nature of the evidence, if any, that the petitioner intends to present in the event that the petition is granted.
- (c) **Designation as intervenor.** The Council shall determine the proposed intervenor's participation in the proceeding, taking into account whether such participation will furnish assistance to the Council in resolving the issues of the case, is in the interests of justice, and will not impair the orderly conduct of the proceedings. Any person named or admitted as an intervenor may decline or withdraw such status at any time upon notifying the Council in writing of their intent not to participate as an intervenor.

Statement of Purpose: The proposed amended regulation was relocated from Section 16-50j-15a of the Regulations of Connecticut State Agencies to maintain consistency

with the order of the party status subsections in Section 16-50j-14 of the Regulations of Connecticut State Agencies.

The main provisions of the amended regulation ensure the regulations accurately reflect statutory requirements for persons to be named as intervenors to an administrative proceeding in accordance with section 4-177a of the Uniform Administrative Procedure Act.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 11. Section 16-50j-15a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-15a. [Application to be an intervenor] Participation by intervenor.

[(a) Request to participate. At any time prior to the commencement of oral testimony in a proceeding, any person may ask the Council for permission to participate as an intervenor.

(b) Contents of request. In so requesting, the proposed intervenor shall state the person's name and address and shall describe the manner in which said person is affected by the proceeding. The proposed intervenor shall further state in what way and to what extent that person proposes to participate in the proceeding.

(c) Designation as intervenor. The council will determine the proposed intervenor's participation in the proceeding, taking into account whether such participation will furnish assistance to the council in resolving the issues of the case, is in the interests of justice, and will not impair the orderly conduct of the proceedings.]

The Council may limit the intervenor's participation pursuant to Section 4-177a of the Connecticut General Statutes, to designated issues in which the intervenor has a particular interest; to defined categories of records, physical evidence, papers and documents; to introduce evidence; and to cross examine on designated issues. The presiding officer may further limit the participation of an intervenor in the proceedings so as to promote the orderly conduct of the proceedings.

Statement of Purpose: The amended regulation was relocated from Section 16-50j-15b of the Regulations of Connecticut State Agencies to maintain consistency with the order of the party status subsections in Section 16-50j-14 of the Regulations of Connecticut State Agencies. The changes are intended to ensure the regulations accurately reflect statutory requirements for persons to be named as intervenors in an administrative proceeding in accordance with section 4-177a of the Uniform Administrative Procedure Act and section 16-50n of the Public Utility Environmental Standards Act.

The main provisions of the amended regulation ensure the regulations accurately reflect statutory requirements for persons to be named as intervenors in an administrative proceeding in accordance with section 4-177a of the Uniform Administrative Procedure Act and section 16-50n of the Public Utility Environmental Standards Act.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 12. Section 16-50j-15b of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-15b. [Participation by Intervenor. The intervenor's participation shall be limited to those particular issues, that state of the proceeding, and that degree of involvement in the presentation of evidence and argument that the Council shall expressly permit at the time such intervention is allowed.] **Limited Appearance.**

(a) Status of Limited Appearance. Pursuant to Section 4-177 and Section 16-50n of the Connecticut General Statutes, prior to, during or within 30 days after the close of a hearing, at the Council's discretion, any person may make a limited appearance. All oral and written limited appearance statements shall become part of the record. No person making a limited appearance shall be a party or intervenor, or shall have the right to cross-examine witnesses, parties or intervenors. No party or intervenor shall have a right to cross-examine a person making a limited appearance. The Council may require a limited appearance statement to be given under oath.

(b) Form of Limited Appearance. A limited appearance may be made in the following forms:

(1) a written statement submitted to the Council prior to, during or after the close of a hearing; or

(2) an oral statement made during the public comment session of a hearing held after 6:30 PM pursuant to Section 16-50m of the Connecticut General Statutes.

Statement of Purpose: The proposed amended regulation was relocated from Section 16-50j-15a of the Regulations of Connecticut State Agencies for consistency and clarity as to the differences between party, intervenor and limited appearance status in administrative proceedings. Under Connecticut General Statutes section 16-50n(f), any person may make a limited appearance at a hearing. The public may present oral statements during the evening session of the hearing held after 6:30 PM pursuant to Connecticut General Statutes section 16-50m or may send written comments to the Council at anytime within 30 days after the close of the final public hearing.

The main provisions of the amended regulation specifically describe the status and form of a limited appearance in an administrative proceeding and how members of the public may make limited appearance statements during a Council proceeding.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 13. Subsections (a) to (c), inclusive, of Section 16-50j-16 of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 16-50j-16. Procedure concerning added parties and intervenors.

(a) During proceeding. In addition to the designation of parties and intervenors in the initial notice and in response to petition, the council may add parties and intervenors at any time during the pendency of any proceeding. [upon its finding that the legal rights, duties, or privileges of any person will be determined by the decision of the Council after the proceeding or that the participation of such person as a party is necessary to the proper disposition of the case].

(b) Notice of designation. In the event that the council shall name or admit any party or intervenor after service of the initial notice of hearing in a proceeding, the council shall give written notice thereof to all parties or intervenors [or groups of parties] theretofore named or admitted. The form of the notice shall be a copy of the order of the council naming or admitting such added party or intervenor and a copy of any petition filed by such added party or intervenor requesting designation as a party or intervenor. Service of such notice shall be in the manner provided in these rules.

(NEW) (c) Participation by added parties and intervenors. Any person granted party or intervenor status is responsible for obtaining and reviewing all materials for the proceeding, including, but not limited to, any notices, orders, filings, or other documents filed or issued in the proceeding prior to the Council's designation of the person as a party or intervenor.

Statement of Purpose: The proposed amended regulation is intended to notify parties and intervenors who are added during the proceeding of their responsibility to obtain and review proceeding materials filed prior to their designation, to ensure the procedures concerning added proceeding participants in the regulations include the addition of intervenors, as well as parties, and to ensure the regulations accurately reflect statutory requirements by including intervenors. The amendments provide the Council with the authority to add parties and intervenors and with discretion to waive the five day filing requirement upon a showing of good cause under section 4-177a of the Uniform Administrative Procedure Act.

The main provisions of the amended regulation ensure the regulations accurately reflect statutory requirements for persons to be named as intervenors in an administrative proceeding in accordance with section 4-177a of the Uniform Administrative Procedure Act and section 16-50n of the Public Utility Environmental Standards Act.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 14. The Regulations of Connecticut State Agencies are amended by adding section **16-50j-16a** as follows:

(NEW) Sec. 16-50j-16a. Grouping of parties and intervenors. Pursuant to Section 16-50n of the Connecticut General Statutes, the Council may, in its discretion, provide for the grouping of parties and intervenors with the same interests. Any party or intervenor who has been included in a group may elect not to be a member of the group by submission of written notice to the Council.

Statement of Purpose: The proposed new regulation is intended to ensure the regulations are consistent with the Council's statutory authority to group parties and intervenors with the same interests pursuant to subsection (c) of section 16-50n of the Connecticut General Statutes.

The main provisions of the proposed regulation provide the Council with discretion to group parties and intervenors with the same interests in an administrative proceeding.

The proposed new regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 15. Section **16-50j-18** of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-18. Grant of hearing. A hearing [will] shall be held, where required by law, on all applications submitted pursuant to sections 16-50l [through] to 16-50q, inclusive, of the Connecticut General Statutes, [and] upon appeal as provided for in section 16-50x(d) of the Connecticut General Statutes [of Connecticut] and on any petition for a declaratory ruling that the Council orders to be set for specified proceedings pursuant to Section 4-176 of the Connecticut General Statutes. In the event of a hazardous waste facility proceeding, a hearing [will] shall be held on all applications submitted pursuant to sections 22a-117 [through] to 22a-122, inclusive, of the Connecticut General Statutes. [In the event of a low-level radioactive waste management facility, a hearing will be held on all applications submitted pursuant to sections 22a-163i—22a-163m, inclusive, of the General Statutes.]

Statement of Purpose: The proposed amended regulation deletes reference to sections of the low-level radioactive waste statutes that were repealed October 1, 2006 and includes reference to petitions for declaratory rulings that may be ordered to proceed with a public hearing by the Council pursuant to Section 4-176 of the Connecticut General Statutes. Public Act 11-245 requires the Council to require a public hearing be held for wind projects. Wind projects with a capacity of 65 megawatts or less are to be filed as petitions for declaratory rulings pursuant to Section 16-50k of the Connecticut General Statutes.

The main provisions of the amended regulation delete reference to repealed statutes and incorporates reference to public hearings that may be held for petitions for declaratory rulings.

The proposed amended regulation complies with the requirements of P.A. 11-245.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §4-176(b)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 16. Section 16-50j-20 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-20. Place of hearings. Hearings shall be held at times and locations specified by the Council pursuant to Sections 16-50m and 22a-119 [and 22a-163i] of the Connecticut General Statutes.

Statement of Purpose: The proposed amended regulation deletes reference to sections of the low-level radioactive waste statutes that were repealed October 1, 2006.

The main provisions of the amended regulation delete references to repealed statutes.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact on the Council due to the modification of this section.

Sec. 17. Subdivisions (1) to (4), inclusive, of Subsection (a) of Section 16-50j-21 of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 16-50j-21. Notice of Hearings. (a) Persons notified.

(1) [The council shall, within] Not later than one week [of] after the fixing of the date or not less than 30 days prior to a hearing date, the Council shall mail written notice of a hearing in any pending matter to all parties and intervenors, to all persons or groups of parties otherwise required by statute to be notified, to such other persons as have filed

with the council their written request for notice of hearing in a particular matter, and to such additional persons as the council directs. The council shall give notice by newspaper publication and by such other means as it deems appropriate and advisable.

(2) The newspaper publication shall be published as specified in [subsection] Section 16-50m [(c) of the General Statutes of Connecticut] of the Connecticut General Statutes.

(NEW) (3) The applicant or petitioner shall post a sign that is visible to the public at least 10 days prior to the public hearing not less than six feet by four feet at or in the vicinity of where the proposed facility would be located informing the public of the name of the applicant or petitioner, the type of facility, the hearing date and location, and contact information for the Council.

(NEW) (4) The applicant or petitioner shall provide notice of the date on or about which the application or petition will be filed with the Council to each person appearing of record as an owner of property that abuts the primary or alternative sites on which the proposed facility would be located. Pursuant to Section 16-50/ of the Connecticut General Statutes, applicants shall publish notice of the date on or about which the application will be filed with the Council in such newspapers that will serve to substantially inform the public. The applicant or petitioner shall provide a copy of such proof of notice and publication, as applicable, in the application or petition that is submitted to the Council.

Statement of Purpose: The proposed amended regulation intends to ensure petitioners make a good faith attempt to ensure abutting property owners of the proposed site or alternative sites are provided with notice. The sign posting requirement is currently encouraged by the Council during pre-hearing conferences. This is an essential method of public notice. A similar requirement is included in the Connecticut Liquor Control Regulations, Section 30-6-A1 of the Regulations of Connecticut State Agencies, as well as municipal planning and zoning regulations. Posting a sign serves to substantially inform the public of an application and afford interested persons an opportunity to meaningfully participate in the proceeding.

The main provisions of the amended regulation refer to notice that substantially informs the public of an application or petition that is filed with the Council and affords interested persons an opportunity to meaningfully participate in the proceeding.

The proposed amended regulation would not impact existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 16-50(l)(b).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 18. Subsection (b) of Section 16-50j-21 of the Regulations of Connecticut State Agencies is amended to read as follows:

(b) Contents of notice. Notice of a hearing shall include, but not be limited to, the following:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and regulations involved;
- (4) a short and plain statement of fact describing the nature of the hearing and the principal facts to be asserted therein; and
- (5) [in the event that the matter upon which a hearing is to be scheduled concerns the certification of or amendment to a certificate for a facility, such notice shall also state] the date, place and time for any scheduled [visits to the] field reviews [to] of the proposed site by the Council.

Statement of Purpose: The proposed amended regulation changes the word “visits” to “field reviews” for clarity. It is standard practice for the Council to provide notice of a public field review for applications and petitions.

The main provisions of the amended regulation relate to notice of field reviews conducted by the Council of proposed energy and telecommunications sites.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 19. Section 16-50j-22 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-22. Representation of Parties. Each person making an appearance before the Council as an attorney, agent or representative of any person, firm, corporation, or association subject to the Council’s regulatory jurisdiction in connection with any contested case or petition for a declaratory ruling shall promptly notify the Council in writing in order that the same may be made a part of the record of the contested case or petition for a declaratory ruling.

Statement of Purpose: The proposed amended regulation includes notification requirements for appearances and representation of parties in connection with petitions for declaratory ruling in addition to certificate proceedings.

The main provisions of the amended regulation refer to appearances and representation of parties in connection with petitions for declaratory ruling in addition to contested cases.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 20. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-22a** as follows:

(NEW) Sec. 16-50j-22a. Conduct of Proceedings.

(a) Procedural Conferences. The Council may schedule a procedural conference either on its own initiative or upon written request by a party or intervenor. At such conference, the Council shall consider matters including, but not limited to:

- (1) The schedule for the proceeding;
- (2) The exchange of pre-hearing interrogatories and pre-filed testimony, exhibits, witness lists and items to be administratively noticed in the proceeding;
- (3) The location(s) of the sign(s) to be erected pursuant to Section 16-50j-21(a)(3) of the Regulations of Connecticut State Agencies; and
- (4) Any other matters that may facilitate the proceeding.

(b) Motions. Any party or intervenor may request that the Council take any action by filing a motion which clearly states the action sought and the grounds therefore. Any motions concerning jurisdictional matters shall be made in writing and shall be considered during a regular Council meeting either prior to or after a hearing, if a hearing is held, for the convenience of the public. Motions may be filed in writing not less than 10 days before a hearing or made during a hearing, if a hearing is held. A party or intervenor may file a written response not less than 7 days before a hearing or respond orally during a hearing, if a hearing is held. If a hearing is not held, written motions shall be filed and responded to in accordance with a schedule specified by Council staff. A copy of all written motions shall be served upon the service list.

(c) Discovery. The purpose of discovery is to provide the Council, parties and intervenors access to all relevant information in an efficient and timely manner to ensure that a complete and accurate record is compiled. Parties and intervenors may serve written information requests only during the time specified by the Council. The Council may serve written information requests on any party or intervenor to the proceeding at any time. The presiding officer may subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in a contested case pursuant to Section 4-177b of the Connecticut General Statutes. Responses to information requests shall be separately and fully answered under the penalties of perjury by the

witness that shall testify during the hearing as to the content of the response. Objections to information requests may be submitted in lieu of a response.

(d) Protective Orders. Pursuant to Section 16-50o and Section 16-50r of the Connecticut General Statutes, any party or intervenor may file a motion for protective order in accordance with the filing procedures of the Council for the following types of information:

(1) Proprietary information as defined under Section 1-210(b) of the Connecticut General Statutes; or

(2) Critical energy infrastructure information defined as specific engineering, vulnerability or detailed design information about proposed or existing critical infrastructure that:

(A) relates to details about the production, generation, transportation, transmission or distribution of energy;

(B) could be useful to a person in planning an attack on critical infrastructure;

(C) is exempt from mandatory disclosure under Section 1-210(b) of the Connecticut General Statutes; and

(D) does not simply give the general location of critical infrastructure.

Statement of Purpose: The proposed new regulation is intended to provide notice to parties, intervenors and the public of procedural matters prior to the date of hearing. The purpose is to expedite the hearing procedure without sacrificing an informative record necessary for the Council to render a decision and without inconveniencing the public with preliminary jurisdictional matters that are more appropriately considered at a Council meeting rather than a public hearing. Reference is made to the subpoena power of the presiding officer under the Uniform Administrative Procedure Act. In December 2009, President Obama issued Proclamation 8460 pertaining to Critical Infrastructure Protection and defined "critical infrastructure" as "... assets, systems and networks, whether physical or virtual, so vital to the U.S. that their incapacitation or destruction would have a debilitating effect on security, national economic security, public health or safety." Cellular phone towers and power grids are specifically identified as "critical infrastructure" in the Proclamation. Therefore, the Council has established procedures for filing critical infrastructure information under protective order.

The main provisions of the new regulation specifically describe Council procedure for the conduct of proceedings, including procedural conferences, motions, discovery and protective orders.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 21. Subsections (a) to (c), inclusive, of Section 16-50j-25 of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 16-50j-25. General provisions. (a) Purpose of hearing. The purpose of the hearing in a contested case or a petition for a declaratory ruling shall be to provide all parties an opportunity to present evidence and cross-examine all issues to be considered by the Council and to provide all intervenors an opportunity to present evidence and cross-examine such issues as the Council permits.

(b) Uncontested disposition of case. Unless precluded by law, any contested case may be resolved by stipulation, agreed settlement, consent order, or default upon order of the Council. Upon such disposition, a copy of the order of the Council shall be served on each party and intervenor.

(c) Pre-Filed Evidence and Testimony. At the discretion of the Council, any evidence or testimony may be required to be pre-filed by a date specified by the council. All pre-filed evidence and testimony shall be received in evidence with the same force and effect as though it were stated orally by the witnesses, provided that each witness shall be present at the hearing at which such prepared written testimony is offered, shall adopt such written testimony under oath, and shall be made available for cross-examination as directed by the Council.

Statement of Purpose: The proposed amended regulation is intended to include hearings that may be held on petitions for declaratory rulings pursuant to Section 4-176 of the Connecticut General Statutes, in addition to hearings held on certificate applications. The amendment adds a heading to subsection (c) for clarity and organization to the section entitled “general provisions.” Currently, there are headings for subsections (a) and (b).

The main provisions of the amended regulation add reference to hearings held on petitions for declaratory ruling and add a heading to subsection (c) for clarity and organization of this section.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 22. Section 16-50j-26 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-26. Record. (a) The record in each contested case and petition for declaratory ruling shall be maintained by the Council in the custody of the Council’s designee and shall include the following:

- (1) any notices, petitions, applications, orders, decisions, motions, briefs, exhibits, and any other documents that have been filed with the Council or issued by the Council in written form;
- (2) all written evidence of any kind received and considered by the Council;
- (3) any questions and offers of proof, together with any objections and rulings thereon during the course of the hearing;
- (4) the official transcript of the hearing. The Council [will] shall not be required to include in the transcript duplications of other portions of the record; and
- (5) any proposed final decision and exceptions thereto, and the final decision.
 - (b) A copy of the record shall [also] be available at all reasonable times for examination by the public without cost at the principal office of the Council.
 - (c) A copy of the transcript of testimony at the hearing shall be filed at an appropriate public office, as determined by the Council, in each county [in which] where the facility or any part thereof is proposed to be located.

Statement of Purpose: The proposed amended regulation intends to clearly indicate where copies of the transcript of the hearing may be accessed by the public.

The main provisions of the amended regulation refer to public access to the transcript of public hearings.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 23. Section 16-50j-28 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-28. Rules of evidence. In accordance with Section 4-178 of the Connecticut General Statutes, the following rules of evidence shall be followed in contested cases:

(a) Rules of privilege. The Council shall give effect to the rules of privilege recognized by law in Connecticut. Subject to these requirements and subject to the right of any party or intervenor to cross examine, any testimony may be received in written form.

(b) [Documentary evidence.] Relevance. [Documentary evidence may be received at the discretion of the council in the form of copies or excerpts, if the original is found not readily available. Upon request by any party or intervenor, an opportunity shall be granted to compare the copy with the original, which shall be subject to production by the person offering such copies. Any documentary evidence that is admitted in the form of a copy or excerpt may be stricken at the discretion of the council upon the failure to produce the original thereof upon finding that the interest of any party or intervenor will be prejudiced substantially thereby.]

Any oral or documentary evidence may be received by the Council, but the Council shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.

(c) [Cross examination] Testimony. [Cross examination may be conducted by any party or intervenor if it is required by the council for full and true disclosure of the facts and is not repetitious or unnecessarily cumulative. If the council proposes to consider a limited appearance statement as evidence, the council may give all parties and intervenors an opportunity to challenge or rebut the statement and to cross-examine the person who makes the statement.]

Pursuant to Section 16-50j-25 of the Regulations of Connecticut State Agencies, in its discretion, the Council may accept any oral or written testimony.

(d) [Facts noticed, council records.] Documentary Evidence.

[The council may take notice of judicially cognizable facts, including prior decisions and orders of the council. Any exhibit admitted as evidence by the council in a prior hearing of a contested case may be offered as evidence in a subsequent contested case and admitted as an exhibit therein; but the council shall not deem such exhibit to be judicially cognizable in whole or in part and shall not consider any facts set forth therein unless such exhibit is duly admitted as evidence in the contested case then being heard.]

(1) Documentary evidence may be received at the discretion of the council in the form of copies or excerpts, if the original is found not readily available. Upon request by any party or intervenor, an opportunity shall be granted to compare the copy with the original, which shall be subject to production by the person offering such copies.

(2) Pre-filed testimony and other documentary evidence shall be produced under oath. Such evidence shall be received by the Council in written form to expedite the public hearing.

(e) [Facts noticed, procedure.] Cross examination. [The council may take notice of generally recognized technical or scientific facts within the council's specialized knowledge. Parties and intervenors shall be afforded an opportunity to contest the material so noticed by being notified before or during the hearing by an appropriate reference in preliminary reports or otherwise of the material noticed. This provision shall also apply to material noticed in any staff memoranda or data that may be submitted to the council for its consideration in the determination of a contested case. The council shall nevertheless employ its experience, technical competence, and specialized knowledge in evaluating evidence presented at the hearing for the purpose of making its finding of facts and arriving at a decision in any contested case.]

Cross examination may be conducted by any party or intervenor if it is required by the Council for full and true disclosure of the facts. Witnesses may be cross-examined on any pre-filed testimony and documents submitted as evidence. If the council proposes to consider a limited appearance statement as evidence, the council shall give all parties and intervenors an opportunity to challenge or rebut the statement and to cross-examine the person who makes the statement.

(NEW) (f) Administrative Notice.

(1) The Council may take notice of judicially cognizable facts, including prior decisions and orders of the council.

- (2) The Council may take notice of generally recognized technical or scientific facts within the Council's specialized knowledge.
- (3) Parties and intervenors shall be notified in a timely manner of any material noticed.
- (4) Parties and intervenors shall be afforded an opportunity to contest any material noticed.

Statement of Purpose: The proposed amended regulation ensures consistency with the evidence in contested case provisions under Section 4-178 of the Uniform Administrative Procedure Act. The changes also clarify and reorganize the subsections of the regulation that refer to the Council's procedures for the submission of testimony, exhibits and items to be administratively noticed.

The main provisions of the amended regulation parallel the provisions of the Uniform Administrative Procedure Act for evidence in contested cases.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 24. Subsection (b) of Section 16-50j-32 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-32. Final Decision.

(b) Service. Parties and intervenors shall be served in the manner provided with a copy of the findings of fact, opinion, decision and order of the Council. A notice of the issuance of the opinion and decision and order shall be published once in each newspaper in which was printed the notice of [application under section 16-50j-13 of these rules] public hearing.

Statement of Purpose: The proposed amended regulation corrects an erroneous reference to section 16-50j-13 of the regulations that pertains to the designation of parties. Conn. Gen. Stat. section 16-50p(f) requires that the Council's opinion and order be published "in such newspapers that will serve substantially to inform the public." Publication of the final decision in the same newspapers as the notice of public hearing ensures consistency with the statute.

The main provisions of the amended regulation correct an erroneous reference to a section of the regulations and designates publication of notice in newspapers that substantially inform the public in the area of the proposed project.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 25. Subsection (a) of Section 16-50j-37 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-37. Procedure after petition filed.

(a) Decision on petition. [Upon receipt of the petition the Council shall] Within ~~[60]~~ 30 days after receipt of a petition for regulation pursuant to Section 4-174 of the Connecticut General Statutes, the Council shall [determine whether to] deny the petition in writing or [to] initiate regulation-making proceedings in accordance with [law] section 4-168 of the Connecticut General Statutes.

Statement of Purpose: The proposed amended regulation ensures consistency with the statutory deadline under Section 4-174 of the Uniform Administrative Procedure Act for the Council to consider petitions concerning the adoption of regulations.

The main provisions of the amended regulation parallel the provisions of the Uniform Administrative Procedure Act related to petitions for the adoption of regulations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 26. Section 16-50j-39 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-39 [Form of petition for declaratory ruling] Filing Requirements

(a) General. Any interested person may at any time request a declaratory ruling of the council with respect to the applicability to such person of any statute, or the validity or applicability of any regulation, final decision, or order enforced, administered, or promulgated by the council. Such request shall be addressed to the council and sent to the principal office of the council by mail or delivered in person during normal business hours. [The request shall be signed by the person in whose behalf the inquiry is made. It shall give the address of the person inquiring and the name and address of such person's attorney, if applicable.] The request shall state clearly and concisely the substance and nature of the request; it shall identify the statute, regulation, final decision, or order concerning which the inquiry is made and shall identify the particular aspect to which the inquiry is directed. The request for a declaratory ruling shall be accompanied by a statement of any [supporting] data, facts, and arguments that support the position of the

person making the inquiry. Where applicable, sections 16-50j-13 [through] to 16-50j-17, inclusive, of the Regulations of Connecticut State Agencies govern requests for participation in the proceeding.

(NEW) (b) Form and content. The form to be followed in the filing of petitions may vary to the extent necessary to provide for the nature of the legal rights, duties, or privileges involved therein, and to the extent necessary to comply with statutory requirements. Nevertheless, all petitions shall include the following components:

- (1) the purpose for which the petition is being made;
- (2) the statutory authority for such petition;
- (3) the exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person. If any petitioner is a corporation, trust association, or other organized group, it shall also give the state under the laws of which it was created or organized;
- (4) the name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the petition are to be addressed. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the petitioner;
- (5) such information as may be required under the applicable provisions of the Uniform Administrative Procedure Act and the Public Utilities Environmental Standards Act;
- (6) such information as any department or agency of the state exercising environmental controls may, by regulation require;
- (7) such information as the petitioner may consider relevant; and
- (8) such additional information as the Council may request.

Statement of Purpose: The proposed amended regulation ensures consistency and compliance with Section 4-176(b) of the Uniform Administrative Procedure Act, which requires each agency to provide for the form and content of petitions, the filing procedure and the procedural rights of persons with respect to petitions. Currently, there is no Council regulation as to the form and content requirements for filing a petition for a declaratory ruling. The section was renamed, "Filing Requirements" to generally refer to the requirements of subsection (a) and new subsection (b).

The main provisions of the amended regulation comport with the requirements of Section 4-176(b) of the Uniform Administrative Procedure Act pertaining to petitions for declaratory ruling.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 4-176(b).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 27. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-39a** as follows:

(NEW) Sec. 16-50j-39a. Completeness Review.

(a) Submission of Petition for Declaratory Ruling to the Council.

No declaratory ruling shall be issued to any person until a complete petition containing all information deemed relevant by the Council has been filed. Relevant information shall at a minimum include that listed in Section 16-50j-39 of the Regulations of Connecticut State Agencies unless an explanation of irrelevancy is provided for any item omitted from a petition. The Council will reserve final judgment of an item's relevancy.

(b) Notification of Completeness.

No later than 30 days after receipt of a petition for declaratory ruling, the Council shall notify the petitioner in writing as to the lack of completeness of the petition. If a petitioner fails or refuses to correct any deficiencies in the manner directed and within the time prescribed by the Council, the petition may be refused for lack of proper submission.

Statement of Purpose: The proposed new regulation adopts rules for the submission of complete information in a petition for declaratory ruling. For docket applications, it is regular practice for the Council to place the matter on the agenda of a regular meeting to accept the filing as "complete." In November 2009, the Federal Communications Commission (FCC) issued a declaratory ruling for the timing of decisions on telecommunications tower applications that included a "30-day completeness review" period. In the event that the application is deemed to be incomplete by the decision making authority, the FCC deadline for the decision is extended by the number of days allowed for corrections or additions to be submitted. The addition of this section enables the petitioner to correct any deficiencies in filing a petition for declaratory ruling identified by the Council rather than have a petition denied for lack of completeness.

The main provisions of the new regulation adopt a process for the Council to make a determination as to the submission of complete information in petitions for declaratory rulings.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 4-176(b).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 28. **Section 16-50j-40** of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-40. Procedure after petition filed. (a) Notice to other persons. Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall, where applicable, provide notice to each person appearing of record as an owner of property which abuts the proposed primary or alternative sites of the proposed facility, each person

appearing of record as an owner of the property or properties, if the property owner of record is different from the petitioner, on which the primary or alternative proposed facility is to be located, and the appropriate municipal officials and government agencies. Proof of such notice shall be submitted with the petition for declaratory ruling. These notice requirements are applicable to proposed facilities that, by statute, are required to be approved by a declaratory ruling in lieu of a certificate under Section 16-50k of the Connecticut General Statutes, and to petitions for a declaratory ruling that the subject of the petition does not constitute a facility. The term "appropriate municipal officials and government agencies" shall mean, in the case of a facility required to be approved by declaratory ruling, the same officials and agencies to be noticed in the application for a certificate under Section 16-50l of the Connecticut General Statutes. Petitioners seeking a declaratory ruling where the subject of the petition is not a facility, shall serve notice to the chief elected official of the municipality where the proposed project is located in whole or in part. Within 30 days after receipt of a petition for a declaratory ruling, the council shall give notice of the petition to all persons to whom notice is required by any provision of law and to all persons who have requested notice of declaratory ruling petitions on the subject matter of the petition. The notice provided by the Council shall provide contact information for the Council, a timeline for public involvement and the date, place and time for any scheduled field review of the proposed project. The council may receive and consider data, facts, arguments, and opinions from persons other than the persons requesting the ruling.

(b) Provision for hearing. If the Council deems a hearing necessary or helpful in determining any issue concerning the request for a declaratory ruling, the Council shall schedule such hearing and give such notice thereof as shall be appropriate. The contested case provisions of [article 2 of] Sections 16-50j-13 to 16-50j-34, inclusive, of the Regulations of Connecticut State Agencies shall govern the practice and procedure of the Council in any hearing concerning a declaratory ruling.

(c) Decision on petition. Within 60 days after receipt of a petition for a declaratory ruling, the council in writing shall: (1) issue a ruling declaring the validity of a regulation or the applicability of the provision of the Connecticut General Statutes, the regulation, or the final decision in question to the specified proceedings; (2) order the matter set for specified proceedings; (3) agree to issue a declaratory ruling by a specified date; (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under Section 4-168, on the subject; or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

(d) Decision. A copy of all rulings issued and any actions taken under subsection (c) of this section shall be promptly delivered to the petitioner and other parties and intervenors personally or by United States mail, certified or registered, postage prepaid, return receipt requested. A declaratory ruling shall contain the names of all parties and intervenors to the proceeding, the particular facts on which it is based, and the reasons for its conclusion.

Statement of Purpose: The proposed amended regulation ensures consistency and compliance with Section 4-176(b) of the Administrative Procedure Act, which requires each agency to provide for the form and content of petitions, the filing procedure and the

procedural rights of persons with respect to petitions. Currently, there is no statutory requirement that a person who submits a petition to the council serve notice on the owner of the property, if the property owner is different from the petitioner, or the owners of the abutting properties of the primary or alternative sites referred to in the petition. This provision is intended to ensure persons who submit petitions to the Council make a good faith attempt to ensure all persons whose rights may be affected by a Council action or decision are provided with notice. This section also provides additional notice to municipalities and government agencies. If a petitioner utilizes Conn. Gen. Stat. § 16-50k to submit a petition to the Council for a facility that would otherwise require a certificate, they are currently not bound by the notice requirements under Conn. Gen. Stat. § 16-50l. This section will require petitioners whose filings would otherwise constitute a certificate, but fall under Conn. Gen. Stat. § 16-50k(a), which requires the Council to approve certain projects by declaratory ruling, such as electric generating facilities using renewable energy sources with a capacity under 65 megawatts, to provide notice to municipal and government agencies. Public Act 11-245 requires a public hearing be held for wind turbine projects, which fall under Conn. Gen. Stat. § 16-50k(a). The Council will provide further notice to persons whose property rights may be affected when the Council receives the petition as required by Conn. Gen. Stat. § 4-176(c). The notice will include a summary of how and when the public may become involved in the proceeding.

The main provisions of the amended regulation comport with the requirements of Section 4-176(b) of the Uniform Administrative Procedure Act pertaining to petitions for declaratory ruling and incorporate notice requirements to substantially inform the public of Council consideration of a proposal submitted as a petition for a declaratory ruling.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 4-176; P.A. 11-245.

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 29. Section 16-50j-41 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-41. Council investigations. The Council may at any time [institute] initiate investigations and enforcement actions pursuant to Section 16-50u of the Connecticut General Statutes. Orders [instituting] initiating the investigation shall indicate the nature of the matters to be investigated and [will] shall be served upon any person being investigated. Upon direction by the Council said person shall file with the Council such data, facts, arguments and statement of position as shall be necessary to respond to the inquiry of the Council. The presiding officer may subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in a contested case pursuant to Section 4-177b of the Connecticut General Statutes. A motion

for protective order may be filed with the Council if the Council requests information that may qualify as proprietary information or critical energy infrastructure information.

Statement of Purpose: The proposed amended regulation provides statutory reference to the Council's authority to initiate investigations and to the subpoena power of the presiding officer. There is also provision for the filing of information under protective order that is requested pursuant to an investigation.

The main provisions of the amended regulation provide statutory references and reference to the procedures for filing information under a protective order.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 30. Section 16-50j-42 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-42. Procedure. The rules of practice and procedure set forth in [article 2] Sections 16-50j-13 to 16-50j-34, inclusive, of the Regulations of Connecticut State Agencies for a contested case proceeding shall govern any hearing held for the purpose of such an investigation.

Statement of Purpose: The proposed amended regulation clarifies specific references to the relevant sections of the Regulations of Connecticut State Agencies concerning contested case proceedings before the Council using the format consistent with the Legislative Commissioner's Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation specifically refer to sections of the regulations relevant to procedure followed in an investigation.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 31. Section 16-50j-43 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-43. Intervention under the Environmental Protection Act of 1971. Any person or other legal entity authorized by or qualifying under the provisions of section

22a-14 [through] to 22a-20, inclusive, of the [general statutes of] Connecticut General Statutes to intervene as a party in any proceeding before the Council shall do so in accordance with the provisions of these rules and regulations as they may be applicable.

Statement of Purpose: The proposed amended regulations makes technical changes to format using “inclusive” and changes “general statutes of Connecticut” to “Connecticut General Statutes” consistent with the Legislative Commissioner’s Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation make formatting changes.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 32. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-44** as follows:

(NEW) Sec. 16-50j-44. Transferability of Certificates.

(a) No certificate may be transferred without approval of the Council pursuant to Section 16-50k of the Connecticut General Statutes.

(b) Any person desiring to transfer a certificate shall jointly submit with the proposed transferee an application to the council. Such application shall, at a minimum, include the date on which such transfer was agreed upon by the parties to the transfer, an explanation of the reasons for the proposed transfer, and the same information about the transferee which is required of an applicant for a certificate.

(c) The proposed transferee shall agree, in writing, to comply with the terms, limitations, and conditions contained in the certificate.

(d) The council shall not approve any transfer if it finds:

(1) That such transfer was contemplated at or prior to the time the certificate was issued and that such fact was not adequately disclosed during the certification proceeding; or

(2) That the transferor or transferee, or both, are not current with payments to the Council for their respective annual assessments and invoices under Section 16-50v of the Connecticut General Statutes.

Statement of purpose: The proposed new regulation adopts rules for transfer of certificates pursuant to Conn. Gen. Stat. §16-50k(b). The addition of this regulation maintains consistency with the hazardous waste siting regulations for transferability of a certificate of public safety and necessity under Section 22a-116-B-8 and specifies the requirements of the transferor and transferee to apply for a transfer of certificate.

The main provisions of the new regulation specify the requirements for a request to transfer a certificate.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 33. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-56** as follows:

(NEW)

ARTICLE 4
ENERGY FACILITIES
Part 1
Rules of Practice

Sec. 16-50j-56. Finding. Pursuant to section 16-50i (a) (1) to (4), inclusive, of the Connecticut General Statutes, the Council finds that each energy site and its associated equipment except as specified in Section 16-50j-57 of the Regulations of Connecticut State Agencies may have a substantial adverse environmental effect and therefore is a facility, and any modification, as defined in section 16-50j-2a(m) of the Regulations of Connecticut State Agencies, to an existing energy site, except as specified in Section 16-50j-57 of the Regulations of Connecticut State Agencies may have a substantial adverse environmental effect.

Statement of Purpose: The proposed new regulation adopts a framework for the Council to review modifications to energy facility sites and associated equipment to determine whether proposals will have a substantial adverse environmental effect or will qualify as exempt modifications. Currently, the regulations provide for such review for modifications to telecommunications and community antenna television equipment facility sites and associated equipment.

The main provisions of the new regulation establish a framework for the determination that modifications to energy facilities will not have a substantial adverse environmental effect.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 34. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-57** as follows:

(NEW) Sec. 16-50j-57. Exemptions.

(a) Exemptions. A facility or any modification to a facility that the Council, or its designee, has determined satisfies the criteria of this section shall be deemed not to have a substantial adverse environmental effect and shall not require a certificate pursuant to Section 16-50k of the Connecticut General Statutes. Facilities or modifications to facilities, including, but not limited to, installation or change-out of circuit breakers, disconnects, transformers, buses and appurtenant equipment, upon Council acknowledgment or acknowledgment of its designee, may qualify for such exemption.

(1) An energy component and associated equipment installed adjacent to a damaged or inoperable existing energy component and associated equipment in order to maintain continuity of service shall not constitute a facility provided that:

(A) such energy component and associated equipment shall be removed at the earliest practicable time but in no event later than one year after installation, unless otherwise approved by the council or unless exempt under subsection (b) of this section, in which event the existing damaged or inoperable energy component and associated equipment shall be removed no later than one year after installation of the new energy component and associated equipment;

(B) the owner or operator of such energy component and associated equipment shall give the property owner of record, if the property owner of record is different from the owner or operator of such component and associated equipment, and the chief elected official of the municipality in which the energy component and associated equipment is located, written notice of the installation or proposed installation of such energy component and associated equipment. The owner or operator of such energy component and associated equipment shall provide the Council with written proof of service of the written notice to the property owner of record, if the property owner of record is different from the owner or operator of such component and associated equipment, and the municipality in which the energy component and associated equipment is located. Notice to all parties shall include the following:

(i) the location of such energy component and associated equipment,
(ii) the reason for the installation, and
(iii) the estimated time such energy component and associated equipment will remain in place;

(C) the notice shall be given at the earliest practicable time but not later than 48 hours after the installation of such energy component and associated equipment; and

(D) the owner or operator of such energy component and associated equipment shall restore the site to its original condition as nearly as practical, subject to such other conditions as ordered by the council, or its designee.

(b) None of the following shall constitute a modification to an existing energy facility that may have a substantial adverse environmental effect:

(1) Routine general maintenance and one-for-one replacement of facility components that are necessary for reliable operation;

(2) Changes on an existing site that do not:

- (A) extend the boundaries of the site beyond the existing fenced compound;
- (B) increase the height of existing associated equipment;
- (C) increase noise levels at the site boundary by 6 decibels or more, or to levels that exceed state and local criteria;
- (D) manage electric and magnetic field levels at the site boundary in a manner that is inconsistent with the Council's Best Management Practices for Electric and Magnetic Fields at the site boundary;
- (E) cause a significant adverse change or alteration in the physical or environmental characteristics of the site; or
- (F) impair the structural integrity of the facility, as determined in a certification provided by a professional engineer licensed in Connecticut, where applicable.

(c) Placement of energy components and associated equipment, owned or operated by the state or a public service company, as defined in Section 16-1 of the Connecticut General Statutes, on any existing non-facility energy site, shall not constitute a substantial adverse environmental effect when the changes on the existing non-facility energy site:

- (1) Have received an acknowledgment by the council that such placement of energy components and associated equipment would not cause a significant change or alteration to the physical and environmental characteristics of the site;
- (2) Do not extend the boundaries of the site by any dimension;
- (3) Do not increase the height of existing associated equipment;
- (4) Do not increase noise levels at the site boundary by 6 decibels or more, or to levels that exceed state and local criteria;
- (5) manage electric and magnetic field levels at the site boundary in a manner that is consistent with the Council's Best Management Practices for Electric and Magnetic Fields at the site boundary; and
- (6) Have received all municipal zoning approvals and building permits, where applicable.

(d) The temporary use of energy components and associated equipment shall not constitute a facility provided that:

- (1) The temporary use is necessary to provide emergency or essential energy service to areas of local disaster or events of statewide significance.
- (2) Any provider of temporary energy service for an event of statewide significance shall provide the Council for its approval 30-day advance written notice of the development of such temporary service. The provider shall also provide the property owner of record, if the property owner of record is different from the provider, and the chief elected official of the affected municipality in which the temporary energy components and associated equipment are to be located 30-day advance written notice prior to the installation. Such notice shall state:
 - (A) the location of the temporary energy components and associated equipment;
 - (B) a letter from the property owner of record, if the property owner of record is different from the provider, authorizing use of the property for the temporary service;
 - (C) the height of the temporary energy components and associated equipment;
 - (D) the electric and magnetic field levels at the site boundary of the temporary energy components and associated equipment will be managed in a manner that is

consistent with the Council's Best Management Practices for Electric and Magnetic Fields;

(E) the noise levels of the temporary energy components and associated equipment measured at the site boundary;

(F) the estimated time the temporary energy components and associated equipment shall be on site and the hours of operation for the temporary energy components and associated equipment; and

(G) the specific reasons for the installation, including, but not limited to, the nature of the event.

(3) Any provider of temporary energy service at an area of a local disaster shall provide to the chief elected official of the affected municipality and the Council written notice within 48 hours of the deployment stating:

(A) The location of the temporary energy components and associated equipment;

(B) a letter from the property owner of record, if the property owner of record is different from the provider, authorizing use of the property for the temporary service;

(C) the height of the temporary energy components and associated equipment;

(D) the electric and magnetic field levels at the site boundary of the temporary energy components and associated equipment will be managed in a manner that is consistent with the Council's Best Management Practices for Electric and Magnetic Fields;

(E) the noise levels of the temporary energy components and associated equipment measured at the site boundary;

(F) the estimated time the temporary energy components and associated equipment shall be on site, the hours of operation of the temporary energy components and associated equipment, and conditions that would render the use of the temporary energy components and associated equipment no longer necessary; and

(G) the nature of the emergency.

(4) In no event shall temporary use of energy components and associated equipment exceed 30 days unless the property owner of record, if the property owner of record is different from the provider, and the Council grant approval for an extension.

Statement of Purpose: This proposed new regulation provides a framework for the Council to review modifications to energy facility sites and associated equipment to determine whether proposals will have a substantial environmental effect or will qualify as exempt modifications. Currently, the regulations provide for such review for modifications of telecommunications and community antenna television facilities and associated equipment.

The main provisions of the new regulation establish criteria for modifications to energy facilities and associated equipment to be determined not to have a substantial adverse environmental effect.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 35. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-58** as follows:

(NEW) Sec. 16-50j-58. Notice of intent to install an exempt energy component and associated equipment.

Except as provided under Sections 16-50j-57(a) and 16-50j-57(d), the owner or operator of any energy component and associated equipment claiming such component and associated equipment are exempt pursuant to Section 16-50j-57 of the Regulations of Connecticut State Agencies shall give the Council, the property owner of record, if the property owner of record is different from the owner or operator of the energy component and associated equipment, and the chief elected official of the municipality in which the energy component and associated equipment is to be located, notice in writing prior to construction of its intent to install such energy component and associated equipment, detailing its reasons for claiming exemption under Section 16-50j-57 of the Regulations of Connecticut State Agencies.

Statement of Purpose: The proposed new regulation provides a framework for the Council staff to efficiently handle minor modifications to energy facilities that will not have a substantial adverse environmental effect and meet certain criteria to qualify for an exemption. The new regulation establishes notice requirements for such modifications. Currently, the regulations provide for such exemptions for telecommunications and community antenna television facilities.

The main provisions of the new regulation establish notice requirements for modifications of energy facilities and associated equipment that qualify for an exemption.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be a fiscal impact due to the addition of this section. The Council filing fee for petitions and exempt modifications is \$625. However, petition expenditures are tracked in order that if they exceed the \$625 filing fee, further invoices are issued. If the expenditures do not reach \$625, the petitioner is either credited or rebated the excess funds; however it should be noted that in the vast majority of cases the total costs exceed \$625. For this reason, collecting a \$625 filing fee for energy exempt modifications, rather than filing a petition would have a minimal fiscal impact because, as stated above, the filing fees are identical. Petition costs vary based on the particular proposal. No additional staff would be required to handle the exempt modifications. Processing the exemptions will not ordinarily require a site visit, resulting in Council expenditure savings for state agency vehicle use and gas, as well as per diem and travel reimbursement for the Council members attending the site visit (per diems are \$200 per event and mileage reimbursement). Assuming 30 petitions in a calendar year are

replaced with 20 energy exempt modifications and 10 petition filings it is estimated that a savings of \$5,000 - \$7,000 may be realized.

Sec. 36. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-59** as follows:

(NEW) Sec. 16-50j-59. Information Required.

In addition to conforming to Section 16-50l of the Connecticut General Statutes and Section 16-50l-2 of the Regulations of Connecticut State Agencies, an application for a certificate of environmental compatibility and public need for the construction of a new energy facility, or a modification of an existing energy facility, as defined in Section 16-50i(a)(1) to (4), inclusive, of the Connecticut General Statutes shall include, but not be limited to:

- (a) A description of the proposed facility and associated equipment, or modification of an existing facility and associated equipment, including, but not limited to, heights of facility components, special design features, and access roads;
- (b) A statement of the need for the proposed facility and associated equipment, or modification of an existing facility and associated equipment with as much specific information as is practicable to demonstrate the need;
- (c) A statement of the benefits expected from the proposed facility and associated equipment, or modification of an existing facility and associated equipment with as much specific information as is practicable;
- (d) (1) The most recent U.S.G.S. topographic quadrangle map (scale 1" = 2000') marked to show the approximate site of the facility and associated equipment, or modification of an existing facility and associated equipment and any significant changes within a one mile radius of the site; and
(2) a map (scale 1" = 200' or less) of the lot or tract on which the facility and associated equipment, or modification of an existing facility and associated equipment is proposed to be located showing the acreage and dimensions of such site, the name and location of adjoining public roads or the nearest public road, and the names of abutting owners and the portions of their lands abutting the site;
- (e)(1) Plan and elevation drawings showing the proposed facility and associated equipment, or modification of an existing facility and associated equipment, the components and all structures on the site; and
(2) where relevant, a terrain profile showing the proposed facility and associated equipment, or modification of an existing facility and associated equipment;
- (f) A description of the site, including the zoning classification of the site and surrounding areas;
- (g) A description of the land uses of the site and surrounding areas;
- (h) A description of the scenic, natural, historic, and recreational characteristics of the proposed site and surrounding area;

- (i) A statement in narrative form of the environmental effects of the proposed facility and associated equipment, or modification of an existing facility and associated equipment;
- (j) A statement containing justification for the site selected including a description of siting criteria and the narrowing process by which other possible sites were considered and eliminated;
- (k) A statement of the estimated cost for site acquisition and construction of the facility and associated equipment, or modification of an existing facility and associated equipment;
- (l) A schedule showing the proposed program of site acquisition, construction, completion, and operation;
- (m) The names and mail addresses of the owner of the site and all abutting owners;
- (n) A listing of any federal, state, regional, district, and municipal agencies with which reviews were conducted concerning the facility or modification of an existing facility, including a copy of any state and municipal agency position or decision with respect to the facility or modification of an existing facility;
- (o) Where relevant, a list of all energy facilities and associated equipment within a 5-mile radius of the proposed facility or modification of an existing facility which are owned or operated by a public service company or the state;
- (p) A description of technological alternatives and a statement containing justification for the proposed facility;
- (q) A description of alternate sites, if applicable, for the proposed facility and associated equipment, or modification of an existing facility and associated equipment with the following information:
 - (1) a U.S.G.S. topographic quadrangle map (scale 1 in = 2000 ft) marked to show the location of alternate sites;
 - (2) a map (scale 1 in = 200 ft or less) of the lots or tracts of the alternate sites for the proposed facility and associated equipment, or modification of an existing facility and associated equipment showing the acreage and dimensions of such site, the name and location of adjoining public roads or the nearest public road, and the names of abutting owners and the portions of their land abutting the alternate site; and
 - (3) such additional information as would be necessary or useful to compare the costs and environmental impacts of the alternate sites with those of the proposed site;
- (r) A statement describing hazards to human health, if any, with such supporting data or references to authoritative sources of information as will be helpful to the understanding of all aspects of the issue, including electric and magnetic field levels at the property boundaries of the proposed site and compliance with the Council's Best Management Practices for Electric and Magnetic Fields; and
- (s) additional information as may be requested by the Council.

Statement of Purpose: The proposed new regulation informs applicants of the specific type of information required to be filed as part of an application for an energy facility that the Council deems both necessary and useful for its evaluation of an application and that contributes to an orderly and expeditious review process. It is consistent with Section 16-50j-74 of the Regulations of Connecticut State Agencies relating to information required

to be submitted for an application for a community antenna television tower or telecommunications tower.

The main provisions of the new regulation specify the information that is required to be filed as part of an application for a certificate for an energy facility.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 37. Subsections (a) to (d), inclusive, of Section 16-50j-60 of the Regulations of Connecticut State Agencies are amended to read as follows:

Part 2

[Right of Way] Development and Management Plan

Sec. 16-50j-60. Requirements for a [right of way] Development and Management Plan (D&M Plan)

(a) Purpose. The council may require the preparation of [right-of-way d&m plans] full or partial Development and Management Plans (D&M Plans) for proposed [electric transmission and fuel transmission] energy facilities, modifications to existing facilities, or where the preparation of such a plan would help significantly in balancing the need for adequate and reliable utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state.

(b) When required. A partial or full D&M plan shall be prepared in accordance with this regulation and shall include the information described in Sections 16-50j-61 to 16-50j-62, inclusive, of the Regulations of Connecticut State Agencies for any proposed [electric transmission or fuel transmission] energy facility for which the council issues a certificate of environmental compatibility and public need, except where the Council provides otherwise at the time it issues the certificate.

(c) Procedure for preparation. The D&M plan shall be prepared by the [company] certificate holder of the [proposing the] proposed facility or modification to an existing facility. The preparer may [in] consult[ation] with the staff of the council to prepare the D&M plan.

(d) Timing of plan. The D&M plan shall be submitted to the council in one or more sections, and the council shall approve, modify, or disapprove each section of the plan [within 45 days] not later than 60 days after receipt of it. Except as otherwise authorized by the council, or if the Council does not act to approve, modify or disapprove the plan or a section thereof within 60 days after receipt of it, no clearing [for] or construction [of the

facility] shall begin prior to approval of applicable sections of the D&M plan by the council.

Statement of Purpose: The proposed amended regulation informs applicants for a certificate that a partial or full D&M plan shall be required by the Council as a condition of the certificate and that specific information is required to be produced in the D&M plan. The amendments expand the scope of activities that may trigger a full or partial D&M plan submission. Although some projects do not require a certification process, they may still benefit from the D&M process. The decision to implement this process is discretionary; each project presents unique circumstances. The change in the timeframe for Council approval from 45 days to 60 days allows the Council and staff additional time to review the D&M plans, which may be complex. An affirmative statement that no construction or clearing shall begin without Council approval was also added to protect public safety and promote energy security.

The main provisions of the amended regulation specify the requirements of the D&M plan process, when it's required, procedures for preparation and timing of Council approval of the plan or sections thereof.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 16-50t(a), which states, "The Council shall prescribe and establish such reasonable regulations and standards in accordance with the provisions of chapter 54 as it deems necessary and in the public interest with respect to application fees, siting of facilities and environmental standards applicable to facilities..."

Fiscal impact: There will be a fiscal impact due to the modification of this section. This may increase staff hours on any given project if a D&M plan is prepared for a project which did not previously require such a plan. Future proposals that may benefit from this provision are petitions. The public will benefit from increased supervision over such projects. This provision will only be invoked for specific projects which show a greater need for supervision beyond the initial approval process. This provision will not require additional staff. Taking a five year average between 2007 and 2011, the Council received 44 petitions. A liberal estimate of 22 petitions may be subject to the D&M process. An average of 1.5 staff hours are typically expended in reviewing a D&M plan. At an average of \$37 per hour, the estimated cost would be approximately \$1,000 - \$1,250 per year. However, costs associated with staff hours on specific projects are invoiced directly to the project proponent and therefore, are recoverable in full by the Council.

Sec. 38. Section 16-50j-61 of the Regulations of Connecticut State Agencies is amended to read as follows:

Se. 16-50j-61. Elements of a D&M plan.

(a) Key map. The D&M plan shall include a key map for the site, including the entire electric transmission or fuel transmission line, as applicable, that is a reproduction at scale of 1[" in.] inch = 2,000[' ft] feet of the most recent USGS topographic maps for its location and route.

(b) Plan drawings. The D&M plan shall consist of maps at a scale of 1[" in.] inch = [200' ft.] 100 feet or larger (called "plan drawings") and supporting documents, which shall contain the following information:

(1) The edges of the proposed site [right-of-way] and of any existing site [right-of-way] contiguous to or crossing it, [and] the portions of those sites [rights-of-way] owned by the company in fee and the identity of the property owner(s) of record of the portions of those sites not owned by the company in fee;

(2) Public roads and public lands crossing or adjoining the site [right-of-way];

(3) The approximate location along the site [right-of-way] of each 50-foot contour line shown on the key map;

(4) The probable location, type, and height of the proposed facility, energy components and associated equipment supporting the facility operation, including, but not limited to, each new transmission structure, position of guys, generalized description of foundations, trench grading plans, depth and width of trenches, trench back-filling plans, and the location of any utility or other structures to remain on the site [right-of-way] or to be removed;

(5) The probable points of access to the site [right-of-way], and the route and likely nature of the access ways [along the right-of-way], including alternatives or options to the probable points of access and access ways [along the right-of-way];

(6) The edges of existing and proposed clearing areas, the type of proposed clearing along each part of the site [right-of-way], and the location and species identification of [any significant amounts of] vegetation that would remain for aesthetic and wildlife value. [the following trees or shrubs or combination of the following trees or shrubs:

Flowering dogwood Juniper spp.

Honeysuckle Silky dogwood

Eastern red cedar Rose

Blueberry Crabapple

Greenbrier Shadbush

Sumac Barberry

Hawthorne Gray dogwood

Grape Alder, speckled, smooth

Hazelnut Mountain laurel

Azalea Viburnum]

(7) Sensitive areas and conditions within and adjoining the site [right-of-way], including, but not [necessarily] limited to:

(A) [Watercourses, any areas regulated under the inland or tidal wetland acts] Wetland and watercourse areas regulated under Chapter 440 of the Connecticut General Statutes, and any locations where construction may create drainage problems;

(B) Areas of high erosion potential;

(C) Any known critical habitats or [sites] areas identified as having rare, [or] endangered, threatened or special concern plant or animal species listed by federal and state governmental agencies;

(D) The location of any known underground [facilities] utilities or resources including, but not limited to, electric lines, fuel lines, drainage systems and natural or artificial, public or private water resources to be crossed.

(NEW)(E) Residences or businesses within or adjoining the site that may be disrupted during the construction process.

(NEW)(F) Significant environmental, historic and ecological features, including, but not limited to, significantly large or old trees, buildings, monuments, stone walls or features of local interest.

(c) [Subsequent] Supplemental information.

(1) Plans, if any, to salvage marketable timber, restore habitat and to maintain snag trees [along the route] within or adjoining the site;

(2) All construction and rehabilitation procedures with [special steps] reasonable mitigation measures that [will] shall be taken to protect the areas and conditions identified in [sub] section 16-50j-61(b)(7) of the Regulations of Connecticut State Agencies, including, but not [necessarily] limited to:

(A) Construction techniques at wetland and watercourse[s to be crossed by construction vehicles] crossings;

(B) Sedimentation and erosion control and rehabilitation procedures, consistent with the Connecticut Guidelines for Soil Erosion and Sediment Control, as updated and amended, for areas of high erosion potential;

(C) Precautions [at sites identified as having endangered species] and all reasonable mitigation measures to be taken in areas within or adjoining the site to minimize any adverse modifications or impacts of such actions on endangered, threatened or special concern plant or animal species listed by federal and state governmental agencies and critical habitats that are in compliance with federal and state recommended standards and guidelines, as amended;

(D) Plans for [changes] modification and rehabilitation of surface, drainage, and other hydrologic features;

(E) Plans for [stream] watercourse bank restoration as defined in Chapter 440 of the Connecticut General Statutes; and

(F) Plans for the protection of historical and archaeological resources with review and comment from [the Connecticut Historical Commission] a state historic preservation officer of the Connecticut Commission on Culture and Tourism, or its successor agency.

(3) Plans for the method [of application] and type of [herbicide] vegetative clearing and maintenance to be used [if any at the time of initial clearing for the proposed line] within or adjacent to the site;

(4) The location of public recreation areas or activities known to exist or being proposed in or adjacent to the site [right-of-way], together with copies of any agreements

between the company and public agencies authorizing public recreation use of the site [right-of-way] to the extent of the company's property rights thereto;

(5) Plans for the ultimate disposal of excess excavated material, stump removal, and periodic maintenance of the site [right-of-way];

(6) Locations of areas where blasting is anticipated; [and]

(7) Rehabilitation plans, including, but not limited to, reseed and topsoil restoration;

(NEW) (8) Contact information for the personnel of the contractor assigned to the project; and

(NEW) (9) Such site-specific information as the Council may require.

(NEW) (d) **Notice.** A copy, or notice of the filing, of the D&M plan, or a copy, or notice of the filing of any changes to the D&M plan, or any section thereof, or any section thereof, shall be provided to the service list and the property owner of record, if applicable, at the same time the plan, or any section thereof, or at the same time any changes to the D&M plan, or any section thereof, is submitted to the Council.

(NEW) (e) **Changes to plan.** The Council may order changes to a D&M plan, including, but not limited to, vegetative screening, paint color, or fence design at any time during or after preparation of the plan.

Statement of Purpose: The proposed amended regulation incorporates energy facility sites, as well as routes of transmission lines, to encompass a broader range of projects subject to the D&M process. Changes provide Council staff with a more detailed depiction of the proposal. The "site" language was added so that D&M submissions provide a complete illustration of the affected property as opposed to being limited to the right-of-way. The revised definition of "site" under Section 16-50j-2a of the Regulations of Connecticut State Agencies includes "right-of-way." The identity of the "owner of record" language was added to accommodate situations where there may be multiple or different owners of the sites referenced contiguous to portions of the site owned by the certificate holder. The list of specific trees/shrubs was deleted in favor of the broader term "vegetation that would remain for aesthetic and wildlife value" to expand the type of vegetative clearing information and species identification of vegetation beneficial for aesthetic and wildlife value requested and provided to the Council. Statutory reference is made to areas of regulated wetlands and watercourses to broaden the type of information requested and provided to the Council. The changes specifically refer to evaluation of potential adverse impacts on endangered, threatened or special concern species and associated critical habitats. The term "facilities" was omitted and replaced with "utilities or resources" to prevent confusion with the statutory definition of facility under Conn. Gen. Stat. §16-50i. Additional requirements for D&M submissions provide the Council with knowledge of possible areas of disturbance or contention at the earliest point during the D&M process so that the Council may have time to consider and react to such issues equitably. Additional requirements also provide the Council with knowledge of possible areas of special environmental, historic and cultural concern at the earliest point during

the D&M process so that the Council may have time to consider specific mitigation and protective measures. The changes serve to include wetlands to be consistent with and as defined under the Inland Wetlands and Watercourses Act, Conn. Gen. Stat. §§ 22a-36 to 22a-45, inclusive, and add reference to the Soil Erosion and Sediment Control Guidelines to establish clear standards for measurement and evaluation of rehabilitation procedures. New subdivisions provide the Council with the authority to request additional information as necessary since each site is unique and site-specific information may be required at the discretion of the Council, as well as require the preparer of the D&M plan to serve all of the proceeding participants and the property owner, if different from the certificate holder, with a copy of the plan for review and comment prior to Council consideration of approval.

The main provisions of the amended regulation clearly specify the requirements to be submitted as part of a D&M plan.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g); Conn. Gen. Stat. §16-50t(a).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 39. Section 16-50j-62 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-62. [Supplemental] Reporting Requirements

(a) **Site Testing and Staging areas.** [The company shall inform] The Council shall receive written notice of the location and size of [the] all areas to be accessed or used for site testing or staging areas. If [the applicant desires to utilize a staging area] such an area is to be used prior to approval of the D&M plan, the Council may approve such use on [such] terms as it deems appropriate.

(b) [Notices of beginning, changes and completion] Notice

(1) The [company] certificate holder, or facility owner or operator, shall provide the Council, in writing, with a minimum of two weeks advance notice of the beginning of:

(A) clearing and access work in each successive portion of the [route] site and [then]

(B) facility construction in that same portion.

(2) The [company] certificate holder, or facility owner or operator, shall provide the Council with advance written notice whenever a significant change of the approved D&M plan is necessary [such as]. If advance written notice is impractical, verbal notice shall be provided to the Council immediately and shall be followed by written notice not later than 48 hours after the verbal notice. Significant changes to the approved D&M plan shall include, but are not limited to, the following:

(A) the location of a [stream] wetland or watercourse crossing;

(B) the location of an access way or a structure in a regulated wetland or watercourse area;

(C) the construction or placement of [a section of access road which would run between structure locations and thereby "close a gap" longitudinally along the right-of-way] any temporary structures or equipment; [and]

(D) a change in structure type[,] or location including, but not limited to, towers, guy wires, associated equipment or other facility structures; and
[The council shall promptly review the changes and shall approve, modify, or disapprove the changes.]

(NEW) (E) utilization of additional mitigation measures, or elimination of mitigation measures.

The Council, or its designee, shall promptly review the changes and shall approve, modify or disapprove the changes in accordance with subsection (d) of section 16-50j-60 of the Regulations of Connecticut State Agencies.

(3) The [company] certificate holder, or facility owner or operator, shall provide the council with a monthly construction progress report, or a construction progress report at time intervals determined by the Council or its designee, indicating changes and deviations from the approved D&M plan. The Council may approve changes and deviations, request corrections or require mitigation measures.

(4) The [company] certificate holder, or facility owner or operator, shall provide the council with written notice of completion of construction and site or [right-of-way] rehabilitation [in each new portion of the route].

(c) Final report. The [company] certificate holder, or facility owner or operator, shall provide the council with a final report for the [entire line] facility 180 days after completion of all site construction and site rehabilitation [and right-of-way acquisition proceedings.] This final report [will] shall identify:

(1) all agreements with abutters or other property owners regarding special maintenance precautions,;

(2) significant changes of the D&M plan that were required because of the property rights of underlying and adjoining owners or for other reasons;

(3) the location of [nontransmission] construction materials which have been left in place including, but not limited to, [in the form of] culverts, erosion control structures along watercourses and steep slopes, and corduroy roads in regulated wetlands;

(4) the location of areas where special planting and reseeding have been done; and

(5) the actual construction cost of the facility, including, but not limited to, the following costs:

(A) clearing and access;

(B) construction of the facility and associated equipment; [and]

(C) rehabilitation; and

(NEW) (D) property acquisition for the site or access to the site.

(NEW) (d) Protective Order. The certificate holder, or facility owner or operator, may file a motion for protective order pertaining to commercial or financial information related to the site or access to the site.

Statement of Purpose: The proposed amended regulation requires that written notice be provided to the Council for site testing and staging area approvals that may need to be

conducted prior to D&M plan approval and prior to commencement of any construction activities. The change from "company" to "certificate holder, or facility owner or operator" more accurately describes the entity, which may have been an applicant or a petitioner, bound by the reporting requirements and maintains consistency with the format of the D&M Plan regulations pertaining to community antenna television and telecommunications towers. The amendments clarify when and how notice of significant changes to the approved D&M Plan is required and the verbal notice option was added in anticipation of necessary changes that may be required immediately due to exigent circumstances, but written notice must follow for the purpose of a complete record. Amendments encompass changes in mitigation measures for environmental preservation and protection, as well as expand the scope of the affected area. "Site" and "facility" are broader terms to define the affected area that is the subject of the D&M plan. The proposed amended regulation establishes a timeframe consistent with telecommunications facilities for which a final report shall be filed with the Council and delete reference to right-of-way acquisition proceedings, which are governed by section 16-50z of the Connecticut General Statutes. Under the Freedom of Information Act, Conn. Gen. Stat. §1-210(b), commercial or financial information given in confidence that is not required by statute to be submitted to the Council is not required to be disclosed. There is no statutory requirement for the Council to receive and request commercial or financial information, therefore a motion for protective order may be filed.

The main provisions of the amended regulation adopt notice and reporting requirements associated with D&M plan construction activities and site rehabilitation.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 16-50t(a).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 40. Section 16-50j-71 of the Regulations of Connecticut State Agencies is amended to read as follows:

ARTICLE 5

Community Antenna Television and Telecommunications Towers

Part 1

Rules of Practice

Sec. 16-50j-71. Finding. Pursuant to section 16-50i (a) (5) and (6) of the Connecticut General Statutes, the Council finds that each community antenna television tower or telecommunications tower and its associated equipment except as specified in section 16-50j-72 [(a)] and section 16-50j-88 of the Regulations of Connecticut State Agencies may have a substantial adverse environmental effect and therefore is a facility; and any modification, as defined in [subsection (1) of] section 16- 50j-2a of the Regulations of Connecticut State Agencies, to an existing tower site, except as specified in section 16-

50j-72 [(b)] and section 16-50j-88 of the Regulations of Connecticut State Agencies, may have a substantial adverse environmental effect.

Statement of Purpose: The proposed amended regulation adds a reference to new Section 16-50j-88 of the Regulations of Connecticut State Agencies pertaining to tower sharing and insert the word “adverse” before “environmental effect” for accuracy and statutory consistency.

Main provisions of the amended regulation refer to proposed new regulations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 41. Section 16-50j-72 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-72. [Exceptions] Exemptions

(NEW) (a) Exemptions. A facility or any modification to a facility that the Council, or its designee, has determined satisfies the criteria of this section shall be deemed not to have a substantial adverse environmental effect and shall not require a certificate pursuant to Section 16-50k of the Connecticut General Statutes. Facilities or modifications to facilities, including, but not limited to, change-outs and installations of antennas on existing telecommunications towers, existing radio towers, functioning smokestacks, functioning water tanks and on or in existing buildings, upon Council acknowledgment or acknowledgment of its designee, may qualify for such exemption.

[(a)] **(1)** A community antenna television tower or telecommunications tower and associated equipment installed adjacent to a damaged or inoperable existing tower and associated equipment in order to maintain continuity of community antenna television service or telecommunications shall not constitute a facility provided that:

[(1)] **(A)** such tower and associated equipment shall be removed at the earliest practicable time but in no event later than [nine months] one year after installation, unless otherwise approved by the Council or unless exempt under subsection (b) of this section in which event the existing damaged or inoperable tower and associated equipment shall be removed no later than [nine months] one year after installation of the new tower and associated equipment;

[(2)] **(B)** the owner or operator of such tower and associated equipment shall give the Council, the property owner of record, if the property owner of record is different from the owner or operator of such tower and associated equipment, and the chief elected official of the municipality in which the tower and associated equipment is located, written notice of the installation or proposed installation of such tower and associated equipment [, which notice shall set forth:]. The owner or operator of such tower and associated equipment shall provide the Council with proof of service of the written notice

to the property owner of record, if the property owner of record is different from the owner or operator of such tower and associated equipment, and the municipality in which the tower or associated equipment is located. Notice to all parties shall include the following:

[(A)] (i) the location of such tower and associated equipment;
[(B)] (ii) the reason for its installation; and
[(C)] (iii) the estimated time such tower and associated equipment [will] shall remain in place.

[(3)] (C) the notice shall be given at the earliest practicable time but not later than 48 hours after the installation of such tower and associated equipment; and

[(4)] (D) the owner or operator of such tower or associated equipment shall restore the site to its original condition as nearly as practical, subject to such other conditions as ordered by the Council, or its designee.

(b) None of the following shall constitute a modification to an existing community antenna television or telecommunications tower that may have a substantial adverse environmental effect:

(1) Routine general maintenance and one-for-one replacement of facility components that is necessary for reliable operation;

(2) Changes on an existing [tower] site that do not:

(A) increase the tower height;

(B) extend the boundaries of the [tower] site by any dimension;

(C) increase noise levels at the [tower] site boundary by 6 decibels or more, or to levels that exceed state and local criteria; [and]

(D) add radio frequency sending or receiving capability which increases the total radio frequency electromagnetic radiation power density measured at the [tower] site boundary to or above the standards adopted by the Federal Communications Commission pursuant to Section 704 of the Telecommunications Act of 1996, as amended, and the State Department of Energy and Environmental Protection, pursuant to Section 22a-162 of the Connecticut General Statutes;

(NEW) (E) cause a significant adverse change or alteration in the physical or environmental characteristics of the site; or

(NEW) (F) impair the structural integrity of the facility, as determined in a certification provided by a professional engineer licensed in Connecticut.

(3) Replacement of an existing CATV tower or telecommunications tower and associated equipment with a tower that is no taller than the tower to be replaced and that [will] does not support public service company or state antennas, or antennas to be used for public cellular radio communications emitting total radio frequency electromagnetic radiation power density measured at the [tower] site boundary to or above the standard adopted by the Federal Communications Commission pursuant to Section 704 of the Telecommunications Act of 1996, as amended, and the State Department of Energy and Environmental Protection pursuant to Section 22a-162 of the Connecticut General Statutes.

(c) Placement of community antenna television towers and head-end structures, telecommunications towers, and associated telecommunications equipment, owned or operated by the state or a public service company, as defined in section 16-1 of the Connecticut General Statutes, or used in a cellular system, as defined in the code of

Federal Regulations Title 47, Part 22, as amended, on any existing non-facility tower, shall not constitute a substantial adverse environmental effect when the changes on the existing non-facility tower:

(1) Have received [a ruling] an acknowledgment [by] from the Council that such facility would not cause a significant change or alteration in the physical and environmental characteristics of the site;

(2) Do not extend the boundaries of the site by any dimension;

(3) Do not increase noise levels at the site boundary by 6 decibels or more, or to levels that exceed state and local criteria;

(4) Do not increase the total radio frequency electromagnetic radiation power density measured at the site boundary to or above the standard adopted by the the Federal Communications Commission pursuant to Section 704 of the Telecommunications Act of 1996, as amended, and the State Department of Energy and Environmental Protection pursuant to Section 22a-162 of the Connecticut General Statutes; and

(5) Have received all municipal zoning approvals and building permits, where applicable.

(d) The temporary use of [cellular] telecommunications equipment shall not constitute a facility provided that:

(1) The temporary use is necessary to provide emergency or essential [telephone] telecommunications service to areas of local disaster or events of statewide significance.

(2) Any provider of temporary [cellular telephone] telecommunications service for an event of statewide significance shall provide to the council for its approval 30 day advance written notice of the development of such temporary [cellular service stating] service. The provider shall also provide the property owner of record, if the property owner of record is different from the provider, and the chief elected official of the municipality in which the temporary facility is to be located, 30 day advance written notice prior to the installation. Such notice shall state:

(A) The location of the [portable] temporary telecommunications [site] equipment [and a letter from the property owner authorizing such use of the property for the temporary service];

(NEW) (B) A letter from the property owner of record, if the property owner of record is different from the provider, authorizing use of the property for the temporary telecommunications service;

[(B)] (C) The height and power density of the [portable] temporary telecommunications [system] equipment;

(NEW) (D) The noise levels of the temporary telecommunications equipment measured at the property lines;

[(C)] (E) The estimated time the [portable] temporary telecommunications [site] equipment [will] shall be in use, including the approximate start and end dates; and

[(D)] (F) The specific reasons for the installation, including, but not limited to, the nature of the event.

(3) Any provider of temporary [cellular telephone] telecommunications service at an area of a local disaster shall provide to the council written notice [within] not later than 48 hours [of] after the deployment stating:

(A) The location of the [portable] temporary telecommunications [site] equipment [and a letter from the property owner authorizing use of the property for the temporary service];

(NEW) (B) A letter from the property owner of record, if the property owner of record is different from the provider, authorizing use of the property for the temporary telecommunications service.

[(B)] (C) The height and power density of the [portable] temporary telecommunications [system] equipment.

(NEW) (D) The noise levels of the temporary telecommunications equipment measured at the property lines;

[(C)] (E) The estimated time the [portable] temporary telecommunications [site] equipment [will] shall be in use, including, but not limited to, the hours of operation of the temporary telecommunications equipment and conditions that would render the use of the temporary telecommunications equipment no longer necessary; and

[(D)] (F) The nature of the emergency.

(4) In no event shall temporary use of [cellular equipment] telecommunications equipment exceed 30 days unless the council and the property owner of record, if the property owner of record is different from the provider, grant approval for an extension.

Statement of Purpose: The proposed amended regulation clarifies the definition and scope of the type of telecommunications modifications that may be exempt from Council approval and adds reference to the term “telecommunications” because telecommunications service encompasses PCS and other technology over which the Council has jurisdiction, as well as any technologies that may be developed in the future. The proposed amendments require approval from the Council and the property owner for an extension to use temporary telecommunications equipment beyond 30 days, include a one year timeframe for removal of inoperable associated equipment in addition to an existing damaged or inoperable tower, and clarify extension of the site boundaries to include extensions by any dimension, including, but not limited to, the fenced compound area. The proposed amendments add noise level criteria consistent with state and local regulations because maximum permissible levels may change in the future and add reference to FCC legislation pertaining to established federal radio frequency standards. Additional criteria is proposed to identify specific potential adverse environmental effects, verify and ensure the structural integrity of the facility, which directly relates to public safety.

The main provisions of the amended regulation establish criteria for modifications to telecommunications facilities and associated equipment to be determined not to have a substantial adverse environmental effect.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 42. Section 16-50j-73 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-73. Notice of intent to erect an exempt tower and associated equipment. Except as otherwise provided under Sections 16-50j-72(a) and Sections 16-50j-72(d), the owner or operator of any tower and associated equipment claiming such tower and associated equipment is exempt pursuant to section 16-50j-72 of the Regulations of Connecticut State Agencies shall give the council, property owner of record, if the property owner of record is different from the owner or operator of the tower and associated equipment, and the chief elected official of the municipality [of the site] in which the temporary facility is to be located, notice in writing prior to construction of its intent to construct such tower and associated equipment, detailing its reasons for claiming exemption under these regulations.

Statement of Purpose: The proposed amended regulation expands the notice requirements to the property owner of record and any adjoining municipality of a tower owner or operator's intent to erect an exempt tower facility.

The main provisions of the amended regulation relate to notice requirements.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 43. Section 16-50j-74 of the Regulations of Connecticut State Agencies is amended to read as follows:

Section 16-50j-74. Information required. In addition to conforming to section 16-50l of the [General Statutes of] Connecticut General Statutes and to Section 16-50l-2 of the Regulations of Connecticut State Agencies, an application for a certificate of environmental compatibility and public need for the construction of a new community antenna television tower and head-end structure or telecommunications tower and associated equipment, or modification to an existing community antenna television tower and head-end structure or telecommunications tower and associated equipment, as defined in sections 16-50i (a) (5) and (6) of the Connecticut General Statutes, shall include [or be accompanied by], but not be limited to, the following:

(a) A description of the proposed tower and associated equipment, or modification [or] and associated equipment including height and special design features, [and of] access roads and power lines, if any;

(b) A statement of the need for the proposed tower and associated equipment, or modification [or] and associated equipment with as much specific information as is practicable to demonstrate the need;

(c) A statement of the benefits expected from the proposed tower and associated equipment, or modification [,or] and associated equipment with as much specific information as is practicable;

(d) (1) The most recent U.S.G.S. topographic quadrangle map (scale 1" = 2000') marked to show the approximate site of the tower and associated equipment, or modification [, or] and associated equipment and any significant changes within a one mile radius of the site; and

(2) a map (scale 1" = 200' or less) of the lot or tract on which the tower and associated equipment, or modification [, or] and associated equipment is proposed to be located showing the acreage and dimensions of such site, the name and location of adjoining public roads or the nearest public road, and the names of abutting owners and the portions of their lands abutting the site;

(e)(1) Plan and elevation drawings showing the proposed tower and associated equipment, or modification [or] and associated equipment, the antennas and other [facilities] components to be supported, and all [associated equipment and] structures on the site; and

(2) where relevant, a terrain profile showing the proposed tower and associated equipment, or modification [or] and associated equipment [and its related transmitting, receiving or relaying tower];

(f) A description of the site, including the zoning classification of the site and surrounding areas;

(g) A description of the land uses of the site and surrounding areas;

(h) A description of the scenic, natural, historic, and recreational characteristics of the proposed site and surrounding area;

(i) A statement in narrative form of the environmental effects of the proposed tower and associated equipment, or modification [or] and associated equipment;

(j) A statement containing justification for the site selected including a description of siting criteria and the narrowing process by which other possible sites were considered and eliminated;

(k) A statement of the estimated cost for site acquisition and construction of the tower and associated equipment, or modification [, or] and associated equipment;

(l) A schedule showing the proposed program of site acquisition, construction, completion, and operation;

(m) The names and mail addresses of the owner of the site and all abutting owners;

(n) A listing of any federal, state, regional, district, and municipal agencies with which reviews were conducted concerning the tower or modification [or associated equipment], including a copy of any state and municipal agency position or decision with respect to the tower or modification [, or associated equipment];

(o) Where relevant, a list of all towers and associated equipment within a [10] 5-mile radius of the proposed tower or modification [, or] and associated equipment which are owned or operated by a public service company or the state;

(p) A description of technological alternatives and a statement containing justification for the proposed facility;

(q) A description of alternate sites, if applicable, for the proposed tower and associated equipment, or modification [, or] and associated equipment] with the following information:

(1) a U.S.G.S. topographic quadrangle map (scale 1 in = 2000 ft) marked to show the location of alternate sites;

(2) a map (scale 1 in = 200 ft or less) of the lots or tracts of the alternate sites for the proposed tower and associated equipment, or modification [, or] and associated equipment showing the acreage and dimensions of such site, the name and location of adjoining public roads or the nearest public road, and the names of abutting owners and the portions of their land abutting the alternate site; and

(3) such additional information as would be necessary or useful to compare the costs and environmental impacts of the alternate sites with those of the proposed site; [and]

(r) A statement describing hazards to human health, if any, with such supporting data or references to authoritative sources of information as will be helpful to the understanding of all aspects of the issue, including signal frequency and power density at the proposed site to be transmitted [or received] by the proposed facility; and

(s) additional information as may be requested by the Council.

Statement of Purpose: The proposed amended regulation informs applicants of the specific type of information required to be filed as part of an application for an energy facility that the Council deems both necessary and useful for its evaluation of an application and that contributes to an orderly and expeditious review process.

The main provisions of the amended regulation specify the information that is required to be filed as part of an application for a certificate for an energy facility.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 44. Section 16-50j-75 of the Regulations of Connecticut State Agencies is amended to read as follows:

Part 2

Development and Management Plan

Sec. 16-50j-75. Requirement for a Development and Management Plan (D&M plan).

(a) Purpose. The Council may require the preparation of full or partial d&m plans for proposed [cable] community antenna television towers or head-end structures and associated equipment or telecommunications towers and associated equipment or a

modification to an existing [tower] site, where the preparation of such a plan would help significantly in balancing the need for adequate and reliable utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state.

(b) When required. A partial or full d&m plan shall be prepared in accordance with this section and shall include the information described in [Secs.] Sections 16-50j-76 [--] to 16-50j-77, inclusive, of the Regulations of Connecticut State Agencies [or an explanation of the irrelevance of the information to the d&m plan.] for any proposed facility for which the Council issues a Certificate of Environmental Compatibility and Public Need or modification to an existing site, except where the Council provides otherwise.

Relevant information in the council's record may be referenced.

(c) Procedure for preparation. The D&M plan shall be prepared by the certificate holder [proposing] of the tower and associated equipment or modification to an existing facility. The preparer may [in] consult[ation] with the staff of the Council to prepare the D&M plan.

(d) Timing of plan. The D&M plan shall be submitted to the Council in one or more sections, and the Council shall approve, modify or disapprove each section of the plan [within 30] not later than 60 days after receipt of it. Except as otherwise authorized by the Council, or if the Council does not act to approve, modify or disapprove the plan or any section thereof within 60 days after receipt of it, no clearing [for] or construction [of the tower and associated equipment] shall begin prior to approval of applicable sections of the D&M plan by the Council.

(NEW) (e) Notice. A copy, or notice of the filing, of the D&M plan, or any section thereof, or a copy, or notice of the filing of any changes to the D&M plan, or any section thereof, shall be provided to the service list and the property owner of record, if applicable, at the same time the plan, or any section thereof, or at the same time any changes to the D&M plan, or any section thereof, is submitted to the Council.

(NEW) (f) Changes to plan. The Council may order changes to the D&M Plan including, but not limited to, vegetative screening, paint color, or fence design at any time during or after preparation of the plan.

Statement of Purpose: The proposed amended regulation provides the Council with discretion to make minor changes to D&M plans for facilities and facility modifications. The change in time for approval was made to maintain consistency with all facility D&M plan requirements and the additional language pertaining to sections of the D&M plan was added to facilitate a more expeditious review process. The reference to "tower and associated equipment" was deleted so that this section may clearly refer not only to "towers and associated equipment," but also to site modifications, if applicable. The amendments require D&M plan preparers to serve all of the proceeding participants and the property owner with a copy of the plan for review and comment.

The main provisions of the amended regulation specify the requirements of the D&M plan process, when it's required, procedures for preparation and timing of Council approval of the plan or sections thereof.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g); Conn. Gen. Stat. §16-50t(a).

Fiscal impact: There will be a fiscal impact due to the modification of this section. This may increase staff hours on any given project if a D&M plan is prepared for a project which did not previously require such a plan. Future proposals that may benefit from this provision are petitions. The public will benefit from increased supervision over such projects. This provision will only be invoked for specific projects which show a greater need for supervision beyond the initial approval process. This provision will not require additional staff. Taking a five year average between 2007 and 2011, the Council received 44 petitions. A liberal estimate of 22 petitions may be subject to the D&M process. An average of 1.5 staff hours are typically expended in reviewing a D&M plan. At an average of \$37 per hour, the estimated cost would be approximately \$1,000-\$1,250 per year. However, costs associated with staff hours on specific projects are invoiced directly to the project proponent and therefore, are recoverable in full by the Council.

Sec. 45. Section 16-50j-76 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-76. Elements of a D&M plan.

(NEW) (a) Key map. The D&M Plan shall include the most recent USGS topographic or quadrangle map (Scale 1" = 2,000') marked to show the site locations of the tower and associated equipment.

[(a)] (b) Plan drawings. The D&M plan shall consist of a map or blueprint at a scale of 1["] inch = 100["] feet or less (called "plan drawings") and supporting documents, which shall contain the following information:

- (1) The edges of the proposed site and of any existing tower and associated equipment sites contiguous or crossing it, and the identity of the property owner(s) of record of such site(s);
- (2) Public roads and public lands crossing or adjoining the site;
- (3) The approximate location on the site of each 10-foot contour line;
- (4) The approximate location, type, and height of the proposed tower and associated equipment, position of guys, generalized description of foundations, and the location of any utility or other structures to remain on the site or to be removed;
- (5) The probably points of access to the site including alternatives or options to the probable points of access;
- (6) The edges of existing and proposed clearing areas, the type of proposed clearing at the site, and the location and species identification of vegetation to be cleared;
- (7) Sensitive areas and conditions within and adjoining the tower site, including, but not [necessarily] limited to:
 - (A) [Watercourses, any areas regulated under the inland or tidal wetland acts] Wetland and watercourse areas regulated under Chapter 440 of the Connecticut General Statutes, and any locations where construction may create drainage problems;
 - (B) Areas of high erosion potential;

(C) Any known critical habitats or [sites] areas identified as having rare, threatened, [or] endangered, or special concern plant or animal species listed by federal and state governmental agencies;

(D) [Special or unusual] Significant environmental, historic and ecological features, [such as] including, but not limited to, significantly large or old trees, buildings, monuments, stone walls or areas of local interest.

(NEW)(E) The location of any known underground utilities or resources including, but not limited to, electric lines, fuel lines, drainage systems, and natural or artificial, public or private water resources; and

(NEW)(F) Residences or businesses within or adjoining the site that may be disrupted during the construction process.

[(b)] (c) Supplemental information.

(1) Special environmental considerations arising from peculiar or unusual characteristics of the site;

(2) Special design features required by peculiar or unusual characteristics of the site; and

(3) [Procedures] All construction and rehabilitation procedures with reasonable mitigation measures that [will] shall be taken to protect the areas and conditions identified in [subsection] Section 16-50j-76(b)(7) of [these regulations] the Regulations of Connecticut State Agencies, including, but not [necessarily] limited to:

(A) Construction techniques at wetland and watercourse[s to be crossed by construction vehicles] crossings;

(B) Sedimentation and erosion control and rehabilitation procedures, consistent with the Connecticut Guidelines for Soil Erosion and Sediment Control as updated and amended for areas of high erosion potential; [and]

(C) Precautions and all reasonable mitigation measures that [will] shall be taken [to protect] in areas within or adjoining the site to minimize any adverse modifications or impacts of such actions on endangered, threatened or special concern plant or animal species listed by federal and state governmental agencies and critical habitats that are in compliance with federal and state recommended standards and guidelines, as amended;

(NEW) (D) Plans for modification and rehabilitation of surface, drainage and other hydrologic features;

(NEW) (E) Plans for watercourse bank restoration as defined in Chapter 440 of the Connecticut General Statutes; and

(NEW) (F) Plans for the protection of historical and archaeological resources with review and comment from a State Historic Preservation Officer of the Connecticut Commission on Culture and Tourism, or its successor agency.

(4) Plans for the method [of application] and type of [herbicide] vegetative clearing and maintenance to be used [if any, at the time of initial clearing] for the proposed site [and for maintenance];

(5) The location of public recreation areas or activities known to exist or being proposed in or adjacent to the proposed site;

(6) Plans for the ultimate disposal of excess excavated material, stump removal and periodic maintenance of the site; [and]

(NEW) (7) Rehabilitation plans, including, but not limited to, reseeding and topsoil restoration; and

[(7)] (8) Such site-specific information as the Council may require.

Statement of Purpose: The proposed amended regulation requires provision of a complete illustration of the property or properties affected by construction activities, including identification of environmental, historic and cultural concerns at the earliest point during the D&M process so that the Council may have time to consider specific mitigation and protective measures. The amendments focus on environmental concerns to ensure the preparers are considering and planning restorative measures, including impacts concerning wetlands that are defined under the Inland Wetlands and Watercourses Act, Conn. Gen. Stat. §§ 22a-36 to 22a-45, inclusive. The amendments add reference to the Soil Erosion and Sediment Control Guidelines to establish clear standards for measurement and evaluation of rehabilitation procedures, and evaluation of potential adverse impacts on endangered, threatened or special concern species and associated critical habitats.

The main provisions of the amended regulation incorporate requirements for identification of environmental, historic and cultural concerns to provide a clear illustration of the impacts of construction activities at the site.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g); Conn. Gen. Stat. §16-50t(a).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 46. Section 16-50j-77 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-77. Reporting requirements. (a) Supervisory Personnel. The certificate holder, or facility owner or operator, shall submit to the council [the names of supervisory personnel] contact information for the personnel of the contractor assigned to the project.

(b) [Notices of beginning, changes, and completion] Notice

(1) The certificate holder, or facility owner or operator, shall provide the Council, in writing, with a minimum of two weeks advance notice of the beginning of:

(A) clearing and access work, and then

(B) construction of the tower and associated equipment.

(2) The certificate holder, or facility owner or operator, shall provide the Council with advance written notice whenever a significant modification of the approved D&M plan is necessary [such as] including, but not limited to, a change in the location of the tower, associated equipment, guy wires, or access road. The Council[’s staff] or its designee shall promptly review the changes, and the Council shall approve, modify, or

disapprove the changes in accordance with subsection (d) of Section 16-50j-75 of the Regulations of Connecticut State Agencies.

(3) The certificate holder, or facility owner or operator, shall provide the Council with a monthly construction progress report, or a construction progress report at time intervals determined by the Council, indicating changes and deviations from the approved D&M plan. The Council [shall] may approve the changes and deviations or request corrections or mitigating measures.

(4) The certificate holder shall provide the Council with written notice of completion of construction and site rehabilitation.

(c) Final report. The certificate holder, or facility owner or operator, shall provide the Council with a final report 180 days after completion of all site construction and site rehabilitation [, and site acquisition proceedings]. This final report [will] shall identify:

(d) The final report shall include the actual construction costs of the tower and associated equipment, including, but not limited to, the following costs:

- (1) construction of the tower and associated equipment;
- (2) site rehabilitation; and
- (3) [property acquisition for site or] access to site.

(NEW) (e) Protective Order. The certificate holder, or facility owner or operator, may file a motion for protective order pertaining to commercial or financial information related to the site or access to the site.

Statement of Purpose: The proposed amended regulation adds reference to “facility owner or operator” in addition to “certificate holder” to encompass petitioners for declaratory ruling for facilities or modifications that did not require a certificate. As a matter of internal policy, once the Council approves a project, the staff oversees compliance with the D&M plan, including changes, deviations, and mitigation measures. Provision for a protective order to be filed was added because under the Freedom of Information Act, Conn. Gen. Stat. §1-210(b), commercial or financial information given in confidence that is not required by statute to be submitted to the Council is not required to be disclosed. There is no statutory requirement for the applicant to submit to the Council commercial or financial information.

The main provisions of the amendment apply to petitions for declaratory rulings where the Council determines a D&M plan is necessary.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 47. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-88** as follows:

(NEW)

PART 3
TOWER SHARING

Sec. 16-50j-88 Procedure governed. A facility or any modification to a facility that the Council has determined satisfies the criteria of this section shall be deemed not to have a substantial adverse environmental effect and shall not require a certificate pursuant to Section 16-50k of the Connecticut General Statutes. Applications for proposed collocations or shared use of facilities, upon Council order approving the collocation or shared use, shall qualify for such exemption. The person requesting the collocation or shared use of a facility shall provide the Council with information in accordance with Section 16-50aa of the Connecticut General Statutes.

Statement of Purpose: The proposed new regulation adopts a process for tower sharing pursuant to Conn. Gen. Stat. §16-50aa entitled, "Tower Sharing," which contains the General Assembly's finding that tower sharing, when technically, legally, environmentally and economically feasible, and when such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest. The current regulations make no reference to "tower sharing" or "collocation," nor do they provide for any guidelines for applying or filing for a tower share or collocation.

The main provisions of the new regulation describe procedure for the filing of a tower sharing request pursuant to Conn. Gen. Stat. § 16-50aa.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 16-50aa.

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 48. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-89** as follows:

(NEW) Sec. 16-50j-89. Requirements for tower sharing.

(a) Application for tower sharing. A person requesting collocation or shared use of a facility under Section 16-50aa of the Connecticut General Statutes shall file with the Council an application for tower sharing, which shall include, but not be limited to, the following information:

- (1) A description of the facility with a site plan detailing existing and proposed antenna installations and associated equipment;
- (2) A description of the proposed antenna installation and associated equipment, including, but not limited to, types, number, height and configuration of antennas, location of associated equipment and utility connections;
- (3) A structural analysis of the tower performed by a licensed engineer in the State of Connecticut with a certification that the proposed shared use is technically feasible;

- (4) A letter from the owner of the facility that the owner agrees to the proposed shared use of the facility;
- (5) A description of any potential environmental impact associated with the proposed shared use, including, but not limited to, visibility, wetlands and water resources, air quality and noise;
- (6) A calculation based on an approved methodology prescribed by the Federal Communications Commission of the power density of the radio frequency emissions to be generated by the existing antennas and the antennas to be installed;
- (7) such information as the applicant may consider relevant; and
- (8) such additional information as the Council may request.

(b) Feasibility Proceeding. Upon request of the person seeking shared use of a facility, the Council shall initiate a feasibility proceeding under Section 16-50aa of the Connecticut General Statutes to determine whether the proposed shared use of a facility is technically, legally, environmentally and economically feasible and meets public safety concerns. The contested case provisions of Sections 16-50j-13 to 16-50j-34, inclusive, of the Regulations of Connecticut State Agencies shall govern the practice and procedure of the Council in any feasibility proceeding concerning the proposed shared use of a facility.

Statement of Purpose: The proposed new regulation adopts a procedure for filing tower sharing requests under Conn. Gen. Stat. §16-50aa entitled, "Tower Sharing," which contains the General Assembly's finding that tower sharing, when technically, legally, environmentally and economically feasible, and when such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest. The current regulations make no reference to "tower sharing" or "collocation," nor do they provide for any guidelines for applying or filing for a tower share or collocation.

The main provisions of the new regulation adopt a process for filing a tower sharing request and provide the criteria to be met for a request to be approved.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. § 16-50aa..

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 49. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-90** as follows:

(NEW). Sec. 16-50j-90. Completeness Review.

(a) Submission of Tower Share application to the Council. No tower share application shall be approved until a complete application containing all information deemed relevant by the Council has been filed. Relevant information shall at a minimum include that listed in Section 16-50j-89 of the Regulations of Connecticut State Agencies unless an

explanation of irrelevancy is provided for any item omitted from an application. The Council will reserve final judgment of an item's relevancy.

(b) Notification of completeness. No later than 30 days after receipt of a tower share application, the Council shall notify the applicant in writing as to the lack of completeness of the application. If an applicant fails or refuses to correct any deficiencies in the manner directed and within the time prescribed by the Council, the application may be refused for lack of proper submission.

Statement of Purpose: The proposed new regulation adopts rules for the submission of complete information in a tower sharing application. For docket applications, it is regular practice for the Council to place the matter on the agenda of a regular meeting to accept the filing as "complete." In November 2009, the Federal Communications Commission (FCC) issued a declaratory ruling for the timing of decisions on telecommunications tower applications that included a "30-day completeness review" period. In the event that the application is deemed to be incomplete by the decision making authority, the FCC deadline for the decision is extended by the number of days allowed for corrections or additions to be submitted. The addition of this section enables the tower share applicant to correct any deficiencies in filing identified by the Council rather than have the tower share application denied for lack of completeness.

The main provisions of the new regulation adopt a process for the Council to make a determination as to the submission of complete information in tower share applications.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 50. The Regulations of Connecticut State Agencies is amended by adding **Section 16-50j-91** as follows:

(NEW)

ARTICLE 6
HAZARDOUS WASTE FACILITIES

Sec. 16-50j-91. Procedure governed. The rules contained in Sections 22a-116-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies govern the practice and procedure for hazardous waste facilities siting before the Connecticut Siting Council under the applicable laws of the state of Connecticut and except where by statute otherwise provided.

Statement of Purpose: The new proposed regulation is intended to direct applicants for the siting of a hazardous waste facility to the Regulations for Hazardous Waste Facilities Siting in Sections 22a-116-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies and Section 22a-122-1 of the Regulations of Connecticut State Agencies. Those regulations describe the process for applying for a certificate from the Council and refer to the Council's regulations for the application for a certificate procedure.

The main provisions of the new regulation provide information as to the location of the regulations for the siting of hazardous waste facilities under Sections 22a-116-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies and Section 22a-122-1 of the Regulations of Connecticut State Agencies.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 51. Section 16-50/-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50/-1. Service. (a) General rule. Service of all documents and other papers filed in all proceedings, including, but not limited to, complaints, motions, petitions, applications, notices, briefs and exhibits, [but not limited to those categories] shall be by personal delivery [or] , by first class mail, or by electronic means if recipients have elected to be served by e-mail. [except as hereinafter provided.]

(b) On whom served. All such documents and other papers shall be served by the person filing the same on every person including the applicant who has theretofore been designated a party or intervenor in the proceeding in accordance with the Service List prepared by the Council in accordance with Section 16-50j-12 of the Regulations of Connecticut State Agencies.

(c) Service by the Council. A copy of any document or other paper served by the Council, showing the addresses to whom the document or other paper was mailed, shall be placed in the Council's files and shall be prima facie evidence of such service and the date thereof.

(d) Service of written notice. Written notice of all orders, decisions or certificates issued by the Council shall be given to the person affected and each party or his authorized representative by personal service upon such person or by United States mail, certified or registered, postage prepaid, return receipt requested.

(e) Newspaper publication. Notice of any application for a certificate or of any application to amend a certificate shall be published by the applicant prior to the filing of such application at least twice in a newspaper or newspapers having general circulation in each municipality wherein any portion of any proposed facility or alternate thereto is to be located. Said notice shall state the name of the applicant, the approximate date of the filing of the application, a summary of such application and the reasons therefore. Such

notice shall be published as specified in [subsection] Section 16-50m(c) of the [General Statutes of] Connecticut General Statutes.

Statement of Purpose: The proposed amended regulation is intended to encompass all documents and papers filed in all proceedings that may not fit into a listed category and provides for service by e-mail to recipients who have elected service by e-mail. The amendment refers to intervenors and the service list of the proceeding under Section 16-50j-12 of the Regulations of Connecticut State Agencies.

The main provisions of the amended regulation require service of documents to include intervenors and the service list of the proceeding.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 52. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50/-1a** as follows:

(NEW) Section 16-50/-1a. Completeness Review.

(a) Submission of application to the Council.

No certificate of environmental compatibility and public need shall be granted to any person until a complete application containing all information deemed relevant by the Council has been filed. Relevant information shall at a minimum include that listed in Section 16-50/-2 of the Regulations of Connecticut State Agencies unless an explanation of irrelevancy is provided for any item omitted from an application. The Council will reserve final judgment of an item's relevancy.

(b) Notification of completeness.

No later than 30 days after receipt of an application, the Council shall notify the applicant in writing as to the completeness of the application. If an applicant fails or refuses to correct any deficiencies in the manner directed and within the time prescribed by the Council, the application may be refused for lack of proper submission.

(c) Additional information.

A determination by the Council that an application is complete at the initiation of the certification process shall not preclude the Council from requiring the applicant to submit additional information subsequently determined to be necessary for a proper and complete evaluation of the proposed facility.

Statement of Purpose: The proposed new regulation adopts rules for the submission of complete information in a certificate application. For docket applications, it is regular

practice for the Council to place the matter on the agenda of a regular meeting to accept the filing as "complete." In November 2009, the Federal Communications Commission (FCC) issued a declaratory ruling for the timing of decisions on telecommunications tower applications that included a "30-day completeness review" period. In the event that the application is deemed to be incomplete by the decision making authority, the FCC deadline for the decision is extended by the number of days allowed for corrections or additions to be submitted. The addition of this section enables the certificate applicant to correct any deficiencies in filing identified by the Council rather than have the application denied for lack of completeness.

The main provisions of the new regulation adopt a process for the Council to make a determination as to the submission of complete information in certificate applications.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact on the Council due to the addition of this section.

Sec. 53. Section 16-50l-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50l-2. Form. The form to be followed in the filing of applications [will] may vary to the extent necessary to provide for the nature of the legal rights, duties, or privileges involved therein, and to the extent necessary to comply with statutory requirements. Nevertheless, all applications shall include the following components:

- (a) The purpose for which the application is being made;
- (b) The statutory authority for such application;
- (c) The exact legal name of each person seeking the authorization or relief and address or principal place of business of each such person. If any applicant is a corporation, trust association, or other organized group, it shall also give the state under the laws of which it was created or organized;
- (d) The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant;
- (e) Such information as may be required under the applicable provisions of Section[s] 16-50l of the Connecticut General Statutes and Section 22a-118 [and 22a-163h] of the [General Statutes of] Connecticut General Statutes;
- (f) Such information as any department or agency of the state exercising environmental controls may, by regulation, require; [and]
- (g) Such information as the applicant may consider relevant; and
- (NEW) (h) Such additional information as the Council may request.

Statement of Purpose: The proposed amended regulation uses the term “may” as opposed to “will” because not all applications will vary from the filing form and deletes reference to Section 22a-163h of the Connecticut General Statutes, which was repealed on October 1, 2006. The amendments refer to completeness review and to additional information that the Council may deem to be both necessary and useful for its evaluation of an application and contribute to an orderly and expeditious review process.

The main provision of the amended regulation provides for the Council to request additional information from an applicant.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 54. Section 16-50/-4 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50/-4. Rejection of an application. Where these rules require that specific exhibits or data be prepared and submitted as part of any application, the council may [within] not later than 30 days [of] after the filing thereof reject and return to the sender any application that the council finds to have failed to comply with such criteria for the submission of exhibits and data as set forth in [these rules] Sections 16-50/-1 to 16-50/-5, inclusive, of the Regulations of Connecticut State Agencies and the Council’s requests for additional information.

Statement of Purpose: The proposed amended regulation clarifies the timing requirements for completeness review of an application and refers specifically to the submission requirements for an application contained in the regulations and Council requests for additional information.

The main provisions of the amended regulation specify an application may be rejected if it does not contain information that is required to be filed under Sections of the Regulations of Connecticut State Agencies.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 55. Section 16-50v-1a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50v-1a. Regulation of fees. (a) All application filing fees required by this section shall be paid to the council at the time an application, amendment to an application, petition, statement of intent, modification of an existing facility, exempt modification, tower share, notice of exemption, or appeal is filed with the council. Assessments shall be made on the applicant, petitioner, or appellant during any proceeding, or thereafter for all administrative, consulting, hearing, field inspections, and Development and Management oversight expenses incurred by the council and staff in excess of any filing fees paid pursuant to this section. The amount of any fees or assessments paid pursuant to this section in excess of actual costs incurred by the council and staff, including consultant expenses, in connection with any proceeding shall be refunded to the applicant, petitioner, or appellant [within] not later than 180 days [of] after the council's decision in the matter.

(b) The fee for each application for a certificate for a facility described in subdivisions (1) to (6), inclusive, of subsection (a) of section 16-50i of the Connecticut General Statutes shall be as follows:

Estimated construction cost	Fee
Up to \$5,000,000	.05% or [\$1,000.00] <u>\$1,250.00,</u> Whichever is greater
Above \$5,000,000	.1% or [\$25,000] <u>\$25,250.00,</u> Whichever is less.

If an application for a certificate for a facility is incorporated in an application for a certificate for any other facility, the fee shall be calculated from the total cost of all such facilities.

(c) The filing fee for an application for an amendment to a certificate, for modification of any existing facility defined in section 16-50i of the Connecticut General Statutes, for an appeal pursuant to Section 16-50x(d) of the Connecticut General Statutes, for an exempt modification pursuant to Sections 16-50j-57 and 16-50j-72 of the Regulations of Connecticut State Agencies, for a tower share pursuant to section 16-50aa of the Connecticut General Statutes or for a petition for declaratory ruling or advisory ruling pursuant to section 16-50j-38 of [these regulations] the Regulations of Connecticut State Agencies shall be [\$500.00] \$625.00. If a hearing is scheduled for any of the foregoing actions, the Council may assess an applicant or petitioner during the proceeding and thereafter for all expenses of the Council and staff in connection with the review, hearing and decision of a matter.

(d) The filing fee for a statement of intent to acquire real property pursuant to section 16-50z(a) of the Connecticut General Statutes shall be [\$50.00] \$100.00.

(e) The expenses incurred for a council or staff field inspection of a certified construction project, of a project for which a petition for declaratory ruling [or advisory ruling] was filed, or for a statement of intent to acquire real property shall be billed quarterly to the applicant, petitioner or filer, and shall in no event exceed \$500.00 per review.

Statement of Purpose: The proposed amended regulation incorporates the provisions of Conn. Gen. Stat. §4-189j entitled, "Increases in fees set in regulations," which required fee increases for each fee in effect pursuant to regulations on and after October 1, 2009 according to a specific fee schedule based on amount. The changes reflect the required fee increases. The amendments expand the scope of application filing fees to include fees associated with filings not subject to a contested case or petition for declaratory ruling, as well as to clarify when fees and assessments are required to be paid to the Council and when fees and assessments are required to be refunded.

The main provisions of the amended regulation incorporate fee increases pursuant to Conn. Gen. Stat. §4-189j.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §4-189j.

Fiscal impact: There will be a fiscal impact due to the modification of this section. Prior to C.G.S. §4-189j, Council filing fees for docket applications were \$1,000, filing fees for petitions, tower sharing applications and exempt modification were \$500 and filing fees for statements of intent to acquire real property were \$50. As of October 1, 2009, the filing fees have increased for docket applications to \$1,250, filing fees have increased for petitions, tower sharing applications and exempt modifications to \$625 and filing fees have increased for statements of intent to acquire real property to \$100. Taking a five year average between 2005 and 2009, the Council received 15 docket applications, 44 petitions, 17 tower sharing applications, 265 exempt modifications and 0 statements of intent to acquire real property. The fee increases would result in \$35,000 - \$45,000 estimated revenue gain per year.

Sec. 56. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50v-3** as follows:

(NEW). Sec. 16-50v-3. Non-payment. The Council shall refrain from considering any pending and future matters filed by any person who fails to pay invoice and assessment amounts that are past due to the Council by 30 days or more under Section 16-50v of the Connecticut General Statutes.

Statement of purpose: The proposed new regulation is intended to notify service providers of the consequences of non-payment of invoices and assessments under Connecticut General Statute §16-50v. The Council may refer a matter of non-payment that is a condition of a certificate to the Attorney General for enforcement proceedings, however, if payment is not a condition of a certificate, the Council must refer the matter to collections. During 2010, the Council encountered a non-payment issue where payment of invoices and assessments was not a condition of the certificates for towers for which the payments related.

The main provisions of the new regulation notify service providers that fees and assessments are required to be paid to the Council when due.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 57. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50v-4** as follows:

(NEW.) Sec. 16-50v-4. Municipal Participation Fees.

(a) In accordance with the provisions of Section 16-50bb of the Connecticut General Statutes, a municipal participation fee shall be paid at the time an application is filed with the Council. Such municipal participation fees shall not be paid for an application for a facility defined under Subdivisions (5) or (6) of Section 16-50i of the Connecticut General Statutes.

(b) Payments from the Municipal Participation Account shall be made upon authorization by the State Treasurer in accordance with Section 16-50bb of the Connecticut General Statutes as follows:

(1) Payments will be made upon submission of an application for reimbursement not later than 60 days after the conclusion of a certification proceeding from municipalities that were entitled to receive a copy of an application under Section 16-50i of the Connecticut General Statutes and that participated in the certification proceeding as a party.

(2) When more than one municipality seeks payment from the account, the Council shall evenly distribute such payments among the municipalities.

(3) No municipality may receive funds from the account in excess of the municipal participation fee paid by the applicant nor may receive funds in excess of the dollar amount expended from its own municipal funds.

(4) Any funds remaining after payments to municipalities shall be refunded to the applicant.

Statement of purpose: The proposed new regulation is intended to notify applicants seeking a certificate for proposed energy facilities that there is a municipal participation fee pursuant to Section 16-50bb of the Connecticut General Statutes. This section notifies applicants and participating municipalities that there is a statutory process in cooperation with the State Treasurer by which fees are paid, distributed and refunded.

The main provisions of the new regulation are to inform affected applicants of the municipal participation fee requirement under Section 16-50bb of the Connecticut General Statutes.

The proposed new regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be no fiscal impact due to the addition of this section.

Sec. 58. Section 16-50z-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50z-1. Statement of intent to acquire. Any person engaged in the transmission of electric power or fuel, as defined in Section 16-50i, intending to acquire real property in contemplation of a possible future transmission facility under the provisions of Section 16-50z of the Connecticut General Statutes, shall, prior to entering any binding commitment therefore, file with the Council a statement of intent to acquire such property. This section applies to an application that incorporates an electric transmission line and an electric substation, but does not apply to an application for an electric substation only. The statement of intent to acquire real property shall include:

- (a) the reasons for the proposed acquisition;
- (b) a description of the property;
- (c) the names and addresses of any persons having an interest in said property;
- (d) the relationship of said property to any existing or future transmission facility;
- (e) the type of property interest to be acquired in said property;
- (f) the manner in which the advance acquisition of said property satisfies the requirements of said section 16-50z(a) of the Connecticut General Statutes; and
- (g) The following maps:
 - (1) a U.S.G.S topographic quadrangle map (scale 1" = 2000') marked to show the approximate location of such property; and
 - (2) a map (scale 1" = 200' or less) of the property itself indicating the acreage and dimensions of such property and the names and mail addresses of the abutting owners.

Statement of Purpose: The amended regulation indicates specifically to which facilities a statement of intent to acquire apply. The Council's declaratory ruling in Petition 237 determined that Conn. Gen. Stat. §16-50z does not apply to electric substations. In Docket 304, the Council rendered a decision on an application for a possible future substation and an electric transmission line for possible use in the town of Oxford. The applicant in Docket 304 properly filed a statement of intent to acquire real property because the application was for an electric substation incorporated in an application concerning an electric transmission line.

The main provisions of the amended regulation serve to clarify the applicability of a statement of intent to acquire real property.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 59. Section 16-50z-2 of the Regulations of State Agencies is amended to read as follows:

Sec. 16-50z-2. Notice of Review. [If the Council decides not to hold a hearing, the acquisition] The acquisition [will] shall be deemed approved [as of the date of such decision, or such acquisition] or may proceed unless the Council gives notice [within] not later than 30 days after such filing that a hearing [will] shall be held to review the conformity of such acquisition with the purposes and intent of section 16-50z(a) of the Connecticut General Statutes or unless the Council receives a written request from the owner of the real property sought to be acquired to initiate a proceeding under Section 16-50z(c) of the Connecticut General Statutes. Notice of a hearing shall be given in accordance with section 16-50j-21 of the [Council's administrative] Regulations of Connecticut State Agencies and section 16-50l of the Connecticut General Statutes. Additional notice shall be:

(a) mailed, certified mail, to the parties of the proposed acquisition, to the chief executive officer and the planning commission of the town in which the property is located; and

(b) Published as specified in [subsection] Section 16-50m of the Connecticut General Statutes [of Connecticut] and no less than 10 days prior to the date of the hearing in a newspaper having general circulation in the town in which the property is located.

Statement of Purpose: The additions are intended to reflect statutory changes made to section 16-50z of the Connecticut General Statutes that allow the owner of the property which is sought to be acquired to request the Council in writing to initiate a proceeding within 30 days following the owner being informed of the public service company's intention.

The main provisions of the amended regulation are to reflect statutory changes made to section 16-50z of the Connecticut General Statutes.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §16-50z(a).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 60. Section 16-50z-3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Section 16-50z-3. Hearing. The hearing shall be conducted in accordance with Section 16-50m of the Connecticut General Statutes and the [State] Uniform Administrative Procedures Act.

Statement of Purpose: The proposed amended regulation accurately reflects citations to the Connecticut General Statutes and Uniform Administrative Procedure Act consistent with the Legislative Commissioner's Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation are to correct citations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §16-50z(a).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 61. Section 16-50z-4 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50z-4. Decision. (a) The Council shall render a decision upon the record either granting or denying the acquisition, giving consideration to:

- (1) [Probable] the hardship for [the] existing owners of the property [or] and of [owners of] adjacent properties;
- (2) [Development and potential development on and nearby the property proposed to be acquired; and] the public need for the acquisition;
- (3) The environmental impacts [, public need, convenience of the owner, and the location of the property proposed to be acquired for the purpose of transmission of electric power or fuel within the state] of electric or fuel transmission line development on the property and adjacent properties; and;
- (4) the location of the property proposed to be acquired.

(b) Approval of such acquisition requires the affirmative vote of the Council. The Council's decision shall be rendered [within] not later than 6 months [of] after the filing with the Council of a statement of intent to acquire property, or not later than 90 days following the Council's receipt of a written request to initiate a proceeding pursuant to Section 16-50z(c) of the Connecticut General Statutes, provided such time period may be extended by the Council by not more than 6 months with the consent of the person intending to acquire the property, or the parties may agree to a longer period.

(c) Notice of the decision of the Council shall be published in a newspaper having general circulation in the town in which the property is located not less than 10 days after the date of said decision. The notice shall be published in accordance with Section 16-50m of the Connecticut General Statutes.

Statement of Purpose: The proposed amended regulation is intended to inform the parties and public that a decision concerning acquisition of real property shall be published by the Council in the same manner as a decision on an application for a certificate pursuant to statutory requirements and intended to clearly describe the Council's considerations for a decision concerning real property acquisition pursuant to

Conn. Gen. Stat. §16-50z. The amendment reflects statutory changes made to section 16-50z of the Connecticut General Statutes that allow the owner of the property which is sought to be acquired to request the Council in writing to initiate a proceeding within 30 days following the owner being informed of the public service company's intention.

The main provisions of the amended regulation are to reflect statutory requirements under section 16-50z of the Connecticut General Statutes and to provide notice of a decision concerning acquisition of real property.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g); Conn. Gen. Stat. §16-50z(a).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 62. Section 22a-116-B-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-1. Purpose, scope, and applicability.

These regulations set forth the requirements, standards and application procedures applicable to the grant or denial, amendment, transfer, suspension, revocation, and enforcement of certificates of public safety and necessity by the Connecticut Siting Council required for the siting of hazardous waste facilities. These regulations are promulgated pursuant to Title 22a, chapter 445, of the Connecticut General Statutes as amended; and Title 4, chapter 54, of the Connecticut General Statutes. Additional regulations governing procedures to be followed by the Connecticut Siting Council for hazardous waste proceedings are promulgated pursuant to Title 16, chapter 277a, of the Connecticut General Statutes, as amended, and appear in [part] Sections 16-50j and 16-50l of the Regulations of Connecticut [regulations] State Agencies. Additionally, requirements relating to minimum distances between active portions of hazardous waste facilities and other land uses appear in [Part] Section 22a-122 of [these regulations] the Regulations of Connecticut State Agencies.

Statement of Purpose: The proposed amended regulation adds the word, "Connecticut" before "General Statutes" and refer to "sections" of the "Regulations of Connecticut State Agencies" consistent with the Legislative Commissioner's Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation change citations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 63. Section 22a-116-B-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-2. Definitions.

As used in Sections 22a-116-B-1 [through] to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies and Section 22a-122-1 of the Regulations of Connecticut State Agencies:

- [(a)] **(1)** “Active Part” for the purposes of minimum distance requirements set forth in Section 22a-122-1 of the Regulations of Connecticut State Agencies means that portion of a hazardous waste facility where handling, storage, treatment, recovery, or disposal of hazardous waste will be, is being, or has in the past been conducted;
- [(b)] **(2)** “Aquifer” means a geologic formation, group of formations, or part of a formation capable of yielding a usable amount of ground water to wells or springs; by Section 22a-117 of the General Statutes to commence construction or modification of a hazardous waste facility;
- [(c)] **(3)** “Certificate” means the certificate of public safety and necessity required by Section 22a-117 of the Connecticut General Statutes to commence construction or modification of a hazardous waste facility;
- [(d)] **(4)** “Closure Period” means the first 180 days after the hazardous waste facility receives its final volume of hazardous waste or any other period fixed by the Council;
- [(e)] **(5)** “Construction” means the fabrication, erection, installation, or excavation of a hazardous waste facility which does not constitute a modification;
- [(f)] **(6)** “Container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled;
- [(g)] **(7)** “Groundwater” means water present in the zone of saturation or an aquifer;
- [(h)] **(8)** “Incinerator” means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators;
- [(i)] **(9)** “Landfill” means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well;
- [(j)] **(10)** “Land treatment facility” means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure;
- [(k)] **(11)** “Local project review committee” means the committee which may be established pursuant to Section 22a-127 of the Connecticut General Statutes;
- [(l)] **(12)** “Management” means the treatment, disposal, or long term storage of hazardous waste;
- [(m)] **(13)** “Neighboring municipality” means any municipality which: (a) shares a common border with the municipality within which the largest portion of the proposed facility is located; (b) occupies any area within a ten-mile radius of the proposed facility site; or (c) petitions the Council pursuant to Section 22a-116-B-5 of the Regulations of Connecticut State Agencies for consideration as the neighboring municipality likely to be most affected by the proposed facility;
- [(n)] **(14)** “Operator” means the person responsible for the overall operation of a facility;

[(o)] **(15)** “Owner” means the person who owns a facility or part of a facility;

[(p)] **(16)** “Surface impoundment” or “impoundment” means a facility or part of facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designated to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons;

[(q)] **(17)** “Surface water” means the tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, lakes, ponds, springs, marshes, drainage systems, and all other surfaces, bodies, or accumulations of water, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof;

[(r)] **(18)** “Tank” means a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials which provide structural support;

[(s)] **(19)** “Thermal treatment” means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge;

[(t)] **(20)** “Transferee” means a person who becomes an owner or operator after a certificate has been issued for the facility;

[(u)] **(21)** “Waste pile” or “pile” means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

Statement of Purpose: The proposed amended regulation changes subsection delineations from letters to numbers to create consecutive numerical designators for defined terms consistent with the Legislative Commissioner’s Office (LCO) Manual for Drafting Regulations and changes citations from “General Statutes” to “Connecticut General Statutes” and add citations to sections of the “Regulations of Connecticut State Agencies” consistent with the Legislative Commissioner’s Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation change citations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 64. Section 22a-116-B-3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-3. Application procedure.

(a) Who shall apply.

(1) The owner or operator of a proposed facility subject to the requirement of certification under Section 22a-117 of the Connecticut General Statutes must apply to the Council for a certificate pursuant to the application provisions of Section 22a-118 of the Connecticut General Statutes. When a proposed facility is to be owned by one person, but operated by another person, both owner and operator, if known at the time of filing, must sign the application.

(b) Public notice. In addition to the public notice requirements of subsection (e) of Section 22a-118 of the Connecticut General Statutes as amended, such notice shall contain the following sentence: "The chief elected official of any municipality which wishes to be represented on the council as the most affected neighboring municipality may apply within 20 days for such status to the Council in accordance with [Connecticut Regulations] Section 22a-116-B-4 of the Regulations of Connecticut State Agencies."

(c) Completeness review.

(1) No certificate of public safety and necessity shall be granted to any person until a complete application containing all information deemed relevant by the council has been filed. Relevant information shall at a minimum include that listed in Section 22a-118 of the Connecticut General Statutes as amended and Section 22a-122-1 of the Regulations of Connecticut State Agencies, unless an explanation of irrelevancy is provided for any item omitted from an application, along with a description of siting criteria and the narrowing process by which other possible sites were considered and eliminated. The Council will reserve final judgment of an item's relevancy.

(2) As soon as practicable after receipt of an application, the Council shall notify the applicant in writing as to the completeness of the application. If an applicant fails or refuses to correct any deficiencies in the manner directed and within the time prescribed by the Council, the application may be denied and rejected for lack of proper submission.

(3) A determination by the Council that an application is complete at the initiation of the certification process shall not preclude the Council from requiring the applicant to submit additional information subsequently determined to be necessary for a proper and complete evaluation of the proposed hazardous waste facility.

Statement of Purpose: The proposed amended regulation changes citations from "General Statutes" to "Connecticut General Statutes" and add citations to sections of the "Regulations of Connecticut State Agencies" consistent with the Legislative Commissioner's Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation changes citations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 65. Subsection (b) of Section 22a-116-B-4 of the Regulations of Connecticut State Agencies is amended to read as follows:

(b) Considerations. No sooner than 20 days and no later than 30 days after receiving an application for a certificate, the permanent members of the Council shall determine the neighboring municipality likely to be most affected by the proposed facility. In making its determination, the Council may consider any relevant information contained in the application for the certificate or in petitions filed by municipalities pursuant to this section. The Council shall, at a minimum, give reasonable consideration to the following information:

- (1) description and location of the proposed facility and proximity to neighboring municipalities;
- (2) maps from the Department of Energy and Environmental Protection review regarding air quality and movement, and surface and groundwater conditions and movement, including proximity to water company facilities and property;
- (3) human population density for the areas of the proposed facility, including neighboring municipalities;
- (4) traffic data, including road and transportation access.

Statement of Purpose: The proposed amended regulation changes reference from Department of Environmental Protection to Department of Energy and Environmental Protection.

The main provision of the amended regulation refers to the new DEEP.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 66. Section 22a-116-B-5 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-5. Fees and assessments.

(a) Payment. All application fees required by the Council for a certificate of public safety and necessity for a hazardous waste facility or modification shall be paid to the Council at the time such application is filed.

(b) Fee schedule. The fee schedule for a certificate for new hazardous waste facilities defined in Section 22a-115 of the Connecticut General Statutes or the modification of existing facilities shall be 1% of estimated construction cost, including land, but not less than [\$5,000] \$5,250 and not more than [\$100,000] \$100,250. The fee for each application for a certificate described in Section 22a-115 of the Connecticut General

Statutes shall be used for the administrative expenses of the Council and its staff incurred in processing the application. In the event a hearing shall be held for such application, assessments of the applicant during the proceeding, or thereafter, shall be made for the expenses of the proceeding, and shall be in addition to any fee paid pursuant to this section. The amount of any fees and assessments paid pursuant to this section which are in excess of the actual expenses of the council in reviewing and acting upon the application shall be refunded within 180 days after all council obligations regarding the application are resolved.

(c) Amendment assessment. The costs incurred by the council in considering and application for an amendment of a certificate of public safety and necessity issued pursuant to Section 22a-117 of the Connecticut General Statutes shall be assessed to the applicant within 180 days after all Council obligations regarding the application are resolved and shall not exceed the actual costs incurred in processing, reviewing, and deciding such application.

(d) Declaratory ruling fee. The fee for each petition for a declaratory ruling pursuant to Section 16-50j-39 of the Regulations of State Agencies shall be [\$500] \$625. In the event that a hearing shall be held for a petition for declaratory ruling, assessments on applicants shall be made for expenses incurred and during the proceeding and shall be in addition to any fee paid pursuant to this section.

(e) Declaratory ruling field inspections. For a petition for a declaratory ruling regarding a hazardous waste facility, the person submitting such request or petition shall make payment of a fee of [\$500] \$625 to the council for a field inspection. This fee shall be paid within 30 days after the Council's inspection and shall be in addition to any fee paid pursuant to this section.

(f) D&M field inspections. Expenses incurred for field inspections in reviewing the D&M plan of a hazardous waste facility shall be billed quarterly to the applicant.

Statement of purpose: The proposed amended regulation complies with Conn. Gen. Stat. §4-189j entitled, "Increases in fees set in regulations," which required fee increases for each fee in effect pursuant to regulations on and after October 1, 2009 according to a specific fee schedule based on amount. The changes reflect the required fee increases.

The main provisions of the amended regulation incorporate fee increases pursuant to Conn. Gen. Stat. §4-189j.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §4-189j; Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be a fiscal impact due to the modification of this section. The fee increases would result in revenue gain, however, the most recent application for siting a hazardous waste facility was decided in June 2000.

Sec. 67. Section 22a-116-B-6 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-6. Local project review grant.

(a) Deposit. Upon the filing of an application with the council, or thereafter if project costs are revised, the applicant shall deposit with the council for the local project review grant an amount calculated as 1% of the total project costs, but not less than [\$1,000] \$1,250 and not more than that authorized by Section 22a-127 of the Connecticut General Statutes, as amended [from time to time].

(b) Disbursement. Upon the filing by the local project review committee established pursuant to Section 22a-127 of the Connecticut General Statutes of receipts for expenses for technical assistance including professional, environmental, scientific, financial and legal assistance incurred by such committee for its review of the proposed hazardous waste facility, the Council shall reimburse the local project review committee a sum not exceeding that deposited by the applicant pursuant to subsection (a) of this section.

Statement of Purpose: The proposed amended regulation complies with Conn. Gen. Stat. §4-189j entitled, "Increases in fees set in regulations," which required fee increases for each fee in effect pursuant to regulations on and after October 1, 2009 according to a specific fee schedule based on amount. The changes reflect the required fee increases.

The main provisions of the amended regulation incorporate fee increases pursuant to Conn. Gen. Stat. §4-189j.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. §4-189j; Conn. Gen. Stat. §16-50j(g).

Fiscal impact: There will be a fiscal impact due to the modification of this section. The fee increases would result in revenue gain, however, the most recent petition for siting a hazardous waste facility was decided in June 2000.

Sec. 68. Section 22a-116-B-7 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-7. Rendering a decision.

(a) Requirements for written decision.

(1) Within twelve months of receipt of a complete application, the Council shall render its decision upon the record by an affirmative vote of not less than seven council members either granting or denying the application as filed, or granting it upon such terms, limitations, or conditions as the council may deem appropriate. The twelve month time limit may be extended by 180 days by agreement of the council and the applicant.

(2) The Council shall file, with its decision, an opinion stating in full the reasons for its decision. The decision shall include a statement describing the items of negotiation between the applicant and local project review committee which the Council has accepted and incorporated into any approval and those negotiated items it has rejected and the reasons therefor.

(3) The Council shall file, with its decision, copies of the reports on negotiations filed by the applicant and the local project review committee, and the record of any council meeting held with the applicant and committee.

(b) Considerations for decision.

(1) In making its decision to grant or deny a certificate, the council shall, consistent with applicable requirements of Sections 4-166 to 4-185, inclusive, of the Connecticut General Statutes, as amended, consider among other relevant facts and circumstances, the following factors:

(A) The impact of the proposed facility on the municipality and affected geographic area in which it is to be located in terms of public health, safety, and welfare including, but not limited to:

(i) The protection of the public and the environment from risk and impact of accident during transportation of hazardous waste;

(ii) The protection of the public and the environment from risk and impact of fires and explosions from improper storage or disposal methods;

(iii) The protection of the public and the environment from risk and impact of exposure of persons to hazardous wastes and their degradation products during facility operation and after its operational life;

(iv) The degree of consistency of the proposed facility with local and regional land use plans and regulations and the state conservation and development plan in effect at the time the applicant applies to the commissioner for the environmental licenses, permits or approvals necessary to construct and operate the facility, and with existing and proposed development in the area;

(v) The protection of the public and the environment from adverse impacts including but not limited to, adverse economic and environmental impacts of the facility during construction and operation, and after its operational life;

(vi) The protection of the public and the environment from risk and impact by the proposed facility on public and private drinking water supplies; and

(vii) The protection of the public and the environment from risk and impact by the proposed facility on scenic, historic and recreational areas; wetlands; flood plains; wildlife areas; habitat for endangered species; and other environmentally sensitive areas.

(B) The population density in the area of the proposed facility and its proximity to residential areas.

(C) The public benefits of the proposed hazardous waste facility including, but not limited to:

(i) The need for the additional disposal capacity provided by the facility;

(ii) The energy and resource recovery benefits, if any, which will be derived from the facility;

(iii) The economic benefit of the facility to the state and its citizens;

(iv) The capability of the proposed facility to accommodate hazardous wastes which would otherwise be disposed of in a less environmentally suitable site or manner;

(v) Economic incentives and benefits which will accrue to the municipality in which the proposed facility is to be located; and

(vi) Any aspects of the proposed facility which would enhance environmental quality.

(D) The extent to which the location of the facility minimizes the need to transport hazardous wastes long distances.

(E) [Whether] The extent to which any other reasonably available alternative disposal method or site [is less detrimental] minimizes detriment to the public health or safety, or the quality of the environment.

(F) The applicant's qualifications and previous experience with hazardous waste disposal, as well as the applicant's financial capabilities.

(G) Whether the applicant has prepared, and agreed to implement, an environmentally sound development and management plan which includes all elements required by Section 22a-116-B-9 of the Regulations of Connecticut State Agencies.

(H) Whether the applicant complies with the minimum distances between active parts of the facility and other land uses established pursuant to Section 22a-122-1 of the [General Statutes] Regulations of Connecticut State Agencies.

(2) The Council may give such consideration to other state laws, municipal ordinances, and regulations as it shall deem appropriate.

(3) In making its decision as to whether or not to issue a certificate, the council shall in no way be limited by the fact that the applicant may have already acquired land or an interest therein or any necessary permits, certificates, or orders for the purpose of constructing the facility which is the subject of its application.

(c) Findings required for the issuance of a certificate. The council shall not grant a certificate unless it finds and determines:

(1) That there is a public need for the facility and explains the basis of such need;

(2) The nature of the probable environmental impact of the facility, including but not limited to impacts due to the construction, operation, transportation of wastes to, and closure and post-closure provisions for the facility.

(3) In the case of a proposed land disposal facility, that there is no other feasible alternative disposal method [is more appropriate] available.

(4) Every significant single and cumulative adverse effect on and conflict with state policies on the subjects listed below and reasons why such adverse effects or conflicts are not sufficient for denial of the certificate:

(A) The natural environment;

(B) The public health and safety;

(C) Ecological balance;

(D) Scenic, historic, and recreational values;

(E) Forests and parks;

(F) Air and water purity including impact on present and future sources of water supply.

(5) That the applicant meets the financial responsibility requirements set for in Section 22a-122(d) of the Connecticut General Statutes and in [these regulations] Sections 22a-116-B-1 to 22a-116-B-11.

Statement of Purpose: The proposed amended regulation corrects citations to the Connecticut General Statutes, Regulations of Connecticut State Agencies and provides clarifying language related to requirements, considerations and findings for the issuance of a certificate.

The main provisions of the amended regulation clarifies language related to requirements, considerations and findings for the issuance of a certificate.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 69. Section 22a-116-B-8 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-8. Transferability of certificates.

- (a) No certificate may be transferred without the approval of the permanent council.
- (b) Any person desiring to transfer a certificate shall jointly submit with the proposed transferee an application to the council on such forms as may be prescribed from time to time by the permanent council members. Such application shall, at a minimum, include the date on which such transfer was agreed upon by the parties to the transfer, an explanation of the reasons for the proposed transfer, and the same information about the transferee which is required of an applicant for a certificate by Section 22a-118 of the Connecticut General Statutes.
- (c) The proposed transferee shall agree, in writing, to comply with the terms, limitations, and conditions contained in the certificate.
- (d) The permanent Council shall not approve any such transfer if it finds:
 - (1) That such transfer was contemplated at or prior to the time the certificate was issued and that such fact was not adequately disclosed during the certification proceeding; or
 - (2) That the transferee lacks the financial, technical, or management capabilities to comply fully with the terms, limitations, or conditions of the certificate.

Statement of Purpose: The proposed amended regulation changes citations from “General Statutes” to “Connecticut General Statutes” and adds citations to sections of the “Regulations of Connecticut State Agencies” consistent with the Legislative Commissioner’s Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation changes citations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.

Sec. 70. Section 22a-116-B-9 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-9. Development and management plan

(a) Purpose. The council may require the preparation of a full or partial D&M plan for any certificated hazardous waste facility or any modification to a hazardous waste facility, where the preparation of such a plan would help to protect the health and safety of Connecticut's citizens and the environmental and economic interests of the state.

(b) Procedure for preparation. The D&M plan shall be prepared by the applicant in [conjunction] consultation with Council staff.

(c) Timing of the plan. The D&M plan shall be submitted to the Council and all parties in one complete filing. The D&M plan shall be approved, modified or denied by the Council within [45] 60 days of [its] receipt of it and prior to the commencement of construction.

(d) Elements of a D&M plan. A D&M plan shall be a precise and complete description of the site and facility to be built and shall include, but not be limited to, the following information:

(1) The original application as revised by the applicant during the proceeding showing all additions, deletions, and changes, with page references, to the original proposal;

(2) A separate statement of the proposed methods, equipment, and schedule for construction or for each section of construction if construction is to continue through the life of the facility, with descriptions of possible adverse construction impacts and methods of minimizing or mitigating such impact;

(3) A description of the effects of construction on site characteristics, such as the effects of grading on surface drainage, and of soil removal or compaction on erosion, permeability and surface drainage;

(4) A statement of the management and administrative program for the operation of the proposed facility;

(5) The names and qualifications of supervisors assigned to the construction project;

(6) The identity of the person to be responsible for operation and a resume of that person's qualifications and experience;

(7) A statement of the number, duties, qualifications, and experience of all personnel job classifications to be involved in the processing, treatment, transfer, storage, recovery, or disposal of hazardous waste.

(e) Supplemental requirements.

(1) Notices and reports of construction.

(A) The applicant shall provide the Council, in writing, a minimum of two weeks advance notice of the beginning of:

(i) clearing, road construction, and site preparation; and

(ii) facility construction or each section of facility construction.

B) The applicant shall provide the Council, in writing, with a monthly construction progress report indicating:

(i) changes and deviations from the approved D&M plan;

(ii) any notices required by and provided to other state agencies; and

(iii) status of construction schedule.

(2) Significant D&M plan changes.

(A) The certificate holder shall notify the Council whenever a significant change of the approved D&M plan is anticipated. The certificate holder shall not implement such change without prior approval of the Council.

(B) A significant change in the D&M plan shall be any change in:

- (i) [in] the location of the facility or its components on the site;
- (ii) [of] the proposed grade and drainage characteristics of the site;
- (iii) [in] the design of the facility or its component structure;
- (iv) [which would result in a change of] a permit required to be considered by the Council in its decision that is issued by the Department of Energy and Environmental Protection for discharge to ground water, surface water, or air;
- (v) proposed operation or management of the facility that may adversely affect the environment or the health and safety of employees or the general public; or
- (vi) [which alters the effect of the decision and order] a condition required by the decision and order. Routine maintenance or replacement of parts with equivalent parts shall not be considered a significant change requiring approval.

(C) The Council shall review proposed changes and shall approve, modify, or disapprove the changes within 60 days.

(3) Final report and approval.

(A) The applicant shall file with the Council a final report within 60 days after completion of construction or of each section of construction, landscaping and rehabilitation, and operational testing, which final report shall include the following information:

- (i) identification of all significant changes in the D&M plan identified pursuant to these regulations;
- (ii) certification by the facility owner and a professional engineer, whose selection is subject to Council approval, that the facility has been constructed in conformity with the specifications and requirements contained in the development and management plan as specified pursuant to this section;
- (iii) dates waste shipments to the site will commence;
- (iv) results of operational tests;
- (v) the date full-time continuous operation will begin;
- (vi) the actual construction cost of the facility, including but not necessarily limited to the costs of site acquisition; site preparation, including erosion control and other measures to mitigate construction impacts; facility construction; and landscaping and rehabilitation.

(B) Within 90 days of receipt of the final report or notice of full time operation of the facility or of each section if construction is to continue throughout the life of the facility, whichever is later, the Council shall review the facility and issue a final approval of completion of the D&M plan, or section thereof, or the Council shall make recommendations to the certificate holder indicating what actions or procedures are necessary to conform to the certificate and receive final approval of completion of the D&M plan or section thereof. A letter of completion of the D&M plan shall be issued when the Council determines that the facility was constructed and is being operated in accordance [to] with the certificate.

Statement of Purpose: The proposed amended regulation changes the timeframe for the Council to approve, modify or deny the D&M plan to be consistent with the timeframes for the Council to approve, modify or deny D&M plans for energy and telecommunications facilities for consistency and specifies references to DEEP permits

required to be considered by the Council in its decision and to conditions that are required by the Council decision.

The main provisions of the amended regulation changes the timeframe for the Council to approve, modify or deny the D&M plan.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g)

Fiscal impact: There will be no fiscal impact on the Council due to the modification of this section.

Sec. 71. Section 22a-116-B-10 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-116-B-10. Enforcement by the Council.

Whenever the Council becomes aware of any unauthorized construction or modification of a hazardous waste facility subject to the requirements of Chapter 445 of the General Statutes or determines that there has been noncompliance with any terms, limitations, or conditions of a certificate, the council, pursuant to Section 22a-123 of the Connecticut General Statutes, will take appropriate enforcement action. Such action may include issuing a cease and desist order, suspending or revoking a certificate, or requesting the Attorney General to bring an enforcement proceeding in superior court.

Statement of Purpose: The proposed amended regulation changes the citation from “General Statutes” to “Connecticut General Statutes” and adds citations to sections of the “Regulations of Connecticut State Agencies” consistent with the Legislative Commissioner’s Office (LCO) Manual for Drafting Regulations.

The main provisions of the amended regulation make changes to citations.

The proposed amended regulation would have no impact on existing regulations or other law.

Statutory authority: Conn. Gen. Stat. § 16-50j(g).

Fiscal impact: There will be no fiscal impact due to the modification of this section.